TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 354 109

THE UNITED STATES, APPELLANT,

vs.

A. A. GREEN, R. R. RICHARDSON, COLIN CAMERON, WILLIAM C. JONES, ET AL.

FILED JULY 12, 1900.

No. 355 129

HARVEY L. CHRISTIE AND COLIN CAMERON, APPELLANTS,

vs.

THE UNITED STATES.

FILED AUGUST 6, 1900.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

(17389 and 17661.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 351.

THE UNITED STATES, APPELLANT,

vs.

A. A. GREEN, R. R. RICHARDSON, COLIN CAMERON, WILLIAM C. JONES, ET AL.

FILED JULY 19, 1900.

No. 379.

HARVEY L. CHRISTIE AND COLIN CAMERON, APPELLANTS,

vs.

THE UNITED STATES.

FILED AUGUST 6, 1900.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

(17836 and 17864.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 351.

THE UNITED STATES, APPELLANT,

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A. A. GREEN, R. R. RICHARDSON, COLIN CAMERON, WILLIAM C. JONES, ET AL.

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HARVEY L. CHRISTIE AND COLIN CAMERON, APPELLANTS,

vs.

THE UNITED STATES.

FILED AUGUST 6, 1900.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 ALFRED A. GREEN
vs.
UNITED STATES, COLIN CAMERON, & HARVEY L. Christie, appellants, et als. } San Rafael de la Zanja Grant.

Appeal from the Court of Private Land Claims.

Transcript on appeal.

UNITED STATES OF AMERICA,
Territory of Arizona.

Be it remembered that heretofore, to wit, on the 27th day of February, A. D. 1893, Alfred A. Green, by his attorneys, Craig & Meredith, filed in the office of the clerk of the Court of Private Land Claims at Tucson, in the Territory of Arizona, a petition; which petition is in the words and figures following, to wit:

2 The Court of Private Land Claims of the United States.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, D. Smith, E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, and O. Smith, defendants.

To the honorable justices of the said court:

The plaintiff, Alfred A. Green, by this his petition respectfully shows: That on the 15th day of May, 1825, the State of the West, in the Republic of Mexico, granted and conveyed to Ramon Romero that certain tract of land, now situated in the county of Pima, in the Territory of Arizona, known and designated as the "Rancho San Rafael de la Zanji," particularly bounded and described as follows: Commencing on the center of the tract at a place called at the time the grant was made "San Rafael," running thence northerly 200 cordels, being 2 leagues, to an oak tree marked with a cross cut thereon and a stone monument at the tree; thence easterly 200 cordels, being 2 leagues, to the northeasterly corner, marked by a heap of stones; thence southerly 400 cordels, being 4 leagues; thence westerly 400 cordels, being 4 leagues, to the
3 southwesterly corner, being on the Pacito de San Antonio, where there are two little hills; thence northerly 400 cordels, being 4 leagues, to a point on the Plumosa Mountain; thence easterly 200 cordels, being two leagues, to the place of beginning. That the plaintiff by mesne conveyances has become invested in the legal title to said grant.

That all of the original documents constituting and creating said grant are in the possession and official custody of the surveyor-general of the United States for the Territory of Arizona, at the city of Tuscon, in said Territory, and that none of said documents are in the possession of or under the control of plaintiff.

That as soon as this petition is filed plaintiff, pursuant to the law, will request said surveyor-general to transmit the same to the clerk of this court.

That the said claim set forth in this petition has not heretofore been confirmed, considered, or acted upon by Congress or any authorities of the United States.

That the following-named persons are in the possession of parts of the said rancho and claim an interest in the lands embraced therein, but not under said grant: E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, and O. Smith.

That the following-named persons claim to have an interest in said rancho under said grant, to wit: R. R. Richardson, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, and D. Smith.

That the map hereto annexed shows the boundaries of said land, and the quantity thereof is sixteen square leagues.

Wherefore plaintiff prays that the validity of such title may be inquired into and decided, and that the title of the plaintiff to
4 said lands be declared valid, and that plaintiff have such other and further relief as may be proper in the premises.

ALFRED A. GREEN,
Petitioner.

CRAIG & MEREDITH,
Attorneys for Petitioner.

Filed in the office of the clerk, Court of Private Land Claims, Feb. 27, 1893. Jas. H. Reeder, clerk. R. L. Long, deputy.

(Here follows map marked "Page 5.")

6 Summons.—U. S. Court of Private Land Claims.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of Arizona, ss:

ALFRED A. GREEN, PLAINTIFF,
versus
THE UNITED STATES OF AMERICA, R. R. Richardson, et als., defendants.

Petition filed in the clerk's office this 27th day of February, A. D. 1893.

The President of the United States of America to United States of America, R. R. Richardson, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, D. Smith, E. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, and O. Smith, greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Alfred A. Green, plaintiff, against you as defendants, under the provisions of the act of the Congress of the United States entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you and that you

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

are required to appear and plead, demur, or answer to the petition filed in said action in said court within 30 days after the service of this summons upon you, and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid.

Witness the honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Tucson, in said district, this 27th day of February, A. D. 1893, and of the Independence of the United States the 116th year.

[SEAL OF THE COURT.] JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk*.

7 *Proof of service.*

UNITED STATES OF AMERICA, *ss:*

———, A. D. 189–.

I hereby certify that I received the within writ on the 28th day of June, A. D. 1893, and that I have personally served the same upon the said defendant. I hereby acknowledge service of the within writ and copy of the petition accompanying it, in the city of Santa Fe, N. M., July 13, 1893.

MATT. G. REYNOLDS,
U. S. Att'y.

(Indorsed:) Gen., No. 2. U. S. Court of Private Land Claims, dist. of Arizona. Alfred A. Green, plaintiff, versus U. S. et al., defendant. Summons. Filed this 29 day of Aug., A. D. 1893. James H. Reeder, clerk, by R. L. Long, deputy clerk. Craig & Meredith, of San Francisco, Cal., attorney for plaintiff.

8 UNITED STATES OF AMERICA, ss.

In the Court of Private Land Claims, Arizona district.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 2.

Comes now the United States by its attorney to answer to the petition filed in the above-entitled cause, says:

That, as to whether the allegations contained in said petition are true, it has no knowledge or information sufficient to enable it to form a belief, and therefore denies the same and asks that said plaintiff's claim be rejected and the petition be dismissed.

MATT. G. REYNOLDS,
U. S. Attorney.

Filed in the office of the clerk, Court of Private Land Claims, Feb. 27, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Indorsed:) No. 2. File No. 7. Answer. Filed in the office of the clerk, Court of Private Land Claims, Feb. 27, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

9 And be it further remembered that afterwards, to wit, on the 29th day of March, A. D. 1894, before the court sitting at Tucson, the following order was made:

ALFRED A. GREEN
vs.
UNITED STATES ET AL. } No. 2, San Rafael de la Zanja.

On motion of Rochester Ford, esq., as attorney for Colin Cameron, one of the defendants herein, leave was granted said Cameron to file answer to the petition herein within 60 days from this date. By consent of the parties hereto this cause was ordered continued for the term.

(Minutes signed.)

JOSEPH R. REED,
Chief Justice.

10 In the Court of Private Land Claims.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, et al., defendants.

Separate answer of Colin Cameron.

Comes now Colin Cameron, one of the defendants herein, by his counsel, and for his separate answer to the petition herein denies that Alfred A. Green, plaintiff, has any right, title, or interest in or to the rancho San Rafael de la Zanja, for the confirmation of which he prays, or any right, title, or interest in or to any part thereof, and defendant denies that said Green is the lawful successor in interest in whole or in part to the rights of the original grantee or grantees of said grant.

And further answering, defendant avers that he is the owner in fee, holder, and possessor of that certain tract of land lying, being, and situate chiefly in the county of Pima, Territory of Arizona, and partly in the county of Cochise, in said Territory, commonly known as and called the San Rafael de la Zanja grant or private land claim, being the same grant mentioned in the complaint herein, and being hereinafter more particularly described. That defendant owns in fee, holds, and possesses such land under and by virtue of a certain instrument of writing now and hereafter designated as and being a grant title, bearing date the 15th day of May, 1825, duly made and executed by Juan Miguel Riesgo, commissary-general of the State of the West, in the name of the sovereign nation of the Mexican Republic.

11 That under and virtue of the laws and decrees then in force such proceedings were thereunder lawfully and regularly had as that the Mexican Republic acting by and through its proper and authorized officers duly and regularly and for a good and valuable consideration, to wit, the sum of $1,297, 6 reales, and 5 grains, and for the other good and valuable considerations in said grant title set forth and described, on the 10th day of January, 1822, sold and conveyed in fee

to one Ramon Romero and other citizens of the presidio of Santa Cruz, the lands hereinbefore mentioned and more particularly hereinafter described, known as the San Rafael de la Zanja grant.

That the proceedings resulting in the issuing of the title to the lands embraced in said grant were instituted by a petition dated July 19, 1821, to Brigadier Don Antonio Cordero, governor intendente of Sonora and Sinaloa, who was then the officer of the Mexican Government in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the jurisdiction of the presidio of Santa Cruz, in which jurisdiction the lands thus petitioned for were situated; that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of intendentes of December 4, 1786, which instructions and ordinances defendant avers were continued in force by the Mexican Republic without any change whatever in them, and that on January 10, 1822, the tract petitioned for and as surveyed according to the calls of the expediente thereof was sold by the officers of the Mexican Republic to Ramon Romero and other citizens of the presidio of Santa Cruz, the grantees thereof, for the sum of $1,297,
12 6 reales, and 5 grains, which amount was thereupon on January 11, 1822, paid by said grantees into the national treasury of the Mexican Republic; that the said sale was on said last-named date approved by the provisional junta of the national treasury and Arizpe, and on the same day was referred to the supreme junta of royal hacienda for its approval; that before it could be approved the said supreme junta of royal hacienda was abolished, and no further proceedings were taken thereon till May 15, 1825, when Juan Miguel Riesgo, commissary-general of the State of the West, acting for and by authority of and in the name of the sovereign nation of the Mexican Republic, issued to said grantees the final testimonio or evidence of title of said grant, and the same was thereupon duly recorded on folio 3 of book No. 2 of the records of grants or sales of land for said year 1825.

That the original grant, title, or instrument of writing by which said grant was conveyed to the aforesaid grantees is not in the possession or under the control of defendant, but is, together with other records and papers relating to said grant, in the possession and custody of the United States surveyor-general of the Territory of Arizona, at the city of Tucson; that for this reason the said original document constituting and creating said grant, together with transcripts or copies thereof, is not herewith presented or delivered, but whenever defendant is by order of this court required so to do he will furnish the necessary and requisite copies of said instruments in the Spanish and English languages.

13 That under the provisions of the 8th section of the act of Congress approved July 22, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof or supplemental thereto, the successors in interest to the original grantees under said grant filed on February 28, 1880, in the office of the United States surveyor-general for the Territory of Arizona their petition asking for the confirmation to them of the said San Rafael de la Zanja grant, accompanying which petition were the original title papers of said grant; that thereupon the

United States surveyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general in his official report under date of April 28, 1880, to Congress on said grant reported that the original expediente of the same, containing thirty-seven pages, was found in the proper place in the archives of Mexico; that said expediente was written on the corresponding stamped paper and showed no cause for suspicion and that there was no doubt as to the genuine character of the original title papers. Defendant avers that the reports of said Special Agent Hopkins and said United States surveyor-general fully established the genuine character of the original title papers of said grant, and that the report of said surveyor-general recommended the confirmation to the legal representatives of the original grantees of said grant to the extent of four square leagues and no more, to be so located as to include the initial or central point of the original survey, but
14 that no action was taken thereon by Congress or by any authorities of the United States except as hereinafter stated.

That the statements in said reports of said Hopkins and said United States surveyor-general are true, and said grant is and at the time of the execution of the treaty known as the Gadsden treaty was located and duly recorded in the archives of Mexico.

That defendant owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by the original grantees of said grant and their grantees to defendant, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof defendant can furnish to this court if he should be by this court directed so to do.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and that at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

That the lands claimed by defendant are all the lands embraced within the original surveys of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant filed herewith.

Defendant further alleges that heretofore, to wit, on September 6, 1886, the United States of America, one of the defendants herein, brought suit against this defendant in the district court of the Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; that said suit was
15 brought under the act of Congress approved February 25, 1885, entitled "An act to prevent unlawful occupancy of the public lands," and that the complaint in said suit alleged that this defendant had enclosed a large tract of the public lands belonging to the United States of America, subject to entry at the proper land office under the laws of the United States in such cases made and provided; that the lands so enclosed were in the first judicial district of the Territory of Arizona, in the county of Pima, and that defendant had enclosed as aforesaid about 800 acres of the public lands without any title or claim or color of title acquired in good faith thereto, and without having first

made application to acquire title thereto or of any part thereof according to law; that this defendant answered in said cause and averred that on May 15, 1825, the Republic of Mexico granted to one Ramon Romero and other citizens of Santa Cruz the tract of land known and described as the rancho San Rafael de la Zanja, the boundaries of which tract were fully and particularly described in said answer, which grant and tract of land was and is the same San Rafael de la Zanja grant owned by defendant as hereinbefore in his answer in this present case alleged; that this defendant further alleged in his answer in said cause that he was the owner of said land grant San Rafael de la Zanja, and that the enclosure referred to in the complaint therein was within the original boundaries of said grant as the same was surveyed by the Mexican authorities prior to the issuance of title to same, as said survey is set out in the original title paper of said grant.

Defendant further alleges that said cause was thereafter tried
16 by the court sitting without a jury, and evidence was therein introduced as to the ownership by this defendant of said grant and of the location of said enclosure, and of the location of each monument described in the testimonio of said grant, and findings of fact were made in said case, and in said case it was found and adjudicated that this defendant had succeeded to all the right, title, and interest which Ramon Romero ever had in or to said grant, and had all such right, title, and interest of Romero in said grant, and it was furthermore found and adjudicated in said case that the fence maintained by this defendant was within the exterior boundaries of said grant as said boundaries were recited as measured in the expediente, or title paper of said grant, being a mile and a quarter south of the northern boundary and four miles west of the eastern boundary of land recited as measured in said title paper; and it was further found and adjudicated in said case that the map hereto attached as Exhibit "A" is a correct representation of the land included within the boundaries described in the original title paper of said grant, and that said map correctly represents the location of each monument called for and described in said title paper, and defendant avers that the lands claimed by him are all the lands embraced within the original survey of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant, filed herewith as Exhibit A, and that said monuments are located according to said map as follows:

From south center monument at mouth of Potrero north 84° 10′ east, four miles 6 chains to the Jaralito; thence north 35° east, 8 miles 10
chains, to the east center monument; thence north 2° 40′ east, 9
17 miles 67 chains, to the northeast corner monument; thence south 87° 30′ west, 9 miles 8 chains, to the tree, being the north center monument; thence south 80° 15′ west, 6 miles 79 chains, to the northwest monument; thence south 11 miles 30 chains to the west center monument; thence south 4° 30′ east, 3 miles 40 chains, to the monument on San Antonio Pass, being the southwest monument; thence north 86° 40′ west, 6 miles, to place of beginning; variation 12° 15′ east.

And defendant pleads such findings of fact as to the monuments and location of said San Rafael de la Zanja land grant as res judicata herein.

Defendant further avers, in order to save every right belonging to him, that he in no wise invokes the jurisdiction of this court or submits himself to it voluntarily, and that he answers herein only because he has been made a party defendant. Defendant avers that he claims the lands of the said San Rafael de la Zanja grant under a title derived from the Mexican Government that was complete and perfect when the United States acquired sovereignty over such lands; that all the steps and proceedings in the matter of the petition, survey, appraisement, offers, auctions and sale of said grant and payment therefor were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in the said grantees of said grant, and that said grantees at the time went into the actual possession, use, and occupation of said grant and erected the proper monuments, and that said grantees and their descendents and legal representatives have continued ever since and until the present time in the actual possession, use, and occupation of the same, and are now seized and possessed in fee thereof; that said grant document
18 is a complete, definitive grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years, without good reason, which abandonment would subject the tract to adjudication to third parties who might apply for or denounce the same; but that no forfeiture of said grant was ever claimed.

Defendant avers that by reason of the premises he is in no wise bound by the act of Congress establishing this court to apply to this court for a confirmation of said title, and that he is unwilling to submit himself to the conditions, or any of them, imposed by the act establishing this court upon petitioners applying to said court for confirmation of their title, and that he does not by this answer, or in any other way, so apply.

ROCHESTER FORD,
Attorney for Defendant Colin Cameron.

Filed in the office of the clerk, Court of Private Land Claims, March 25, 1895. Jas. H. Reeder, clerk. By R. L. Long, deputy.

19 In the Court of Private Land Claims, Arizona district.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. RICHARDSON, Colin Cameron, et al., defendants.

Separate answer of Colin Cameron.

Comes now Colin Cameron, one of the defendants herein, by his counsel, and for separate answer to the petition herein denies that Alfred A. Green, plaintiff, has any right, title, or interest in or to the Rancho San Rafael dé la Zanja, for the confirmation of which he prays, or any right, title, or interest in or to any part thereof, and defendant denies that said Green is the holder, owner, or possessor of said grant or any part thereof, and alleges that before the institution of this suit he had parted with any title to or interest in said grant that he may at any time have possessed.

And, further answering, defendant avers that he is the owner in fee, holder, and possessor of that certain tract of land lying, being, and situate chiefly in the county of Pima, Territory of Arizona, and partly in

the county of Cochise, in said Territory, commonly known as and called the San Rafael de la Zanja grant or private land claim, being the same grant mentioned in the complaint herein, and more particularly hereinafter described.

That defendant owns in fee, holds, and possesses such land under and by virtue of a certain instrument of writing now and hereafter designated as and being a grant title, bearing date the 15th day of May, 1825, duly made and executed by Juan Miguel Riesgo, commissary-general of the State of the West, in the name of the sovereign nation of the Mexican Republic.

20 That under and by virtue of the laws and decrees then in force such proceedings were thereunder lawfully and regularly had as that the Mexican Republic, acting by and through its proper and authorized officers duly and regularly and for a good and valuable consideration, to wit, the sum of $1,297, 6 reales, and 5 grains, and for other good and valuable considerations in said grant title set forth and described on the 10th day of January, 1822, sold and conveyed in fee to one Ramon Romero and other citizens of the presidio of Santa Cruz the lands hereinbefore mentioned and more particularly hereinafter described, known as the San Rafael de la Zanja grant.

That the proceedings resulting in the issuing of the title to the lands embraced in said grant were instituted by a petition dated July 19, 1821, to Brigadier Don Antonio Cordero, governor intendente of Sonora and Sinaloa, who was then the officer in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the jurisdiction of the presidio of Santa Cruz, in which jurisdiction the lands thus petitioned for is situated; that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of intendentes of December 4, 1786, which instructions and ordinances defendant avers were continued in force by the Mexican Republic without any change whatever in them, and that on January 10, 1822, the tract petitioned for and as surveyed, according to the calls of the expediente thereof, was sold by the officers of the Mexican Republic to Ramon Romero and other citizens of the presidio of Santa Cruz, the grantees thereof, for the sum of $1,297, 6 reales, and 5 grains, which amount was thereupon, on January 11, 1822, paid by said grantees into the national treasury of the Mexican Republic; that the said sale was on said last-named date approved by the provisional junta of the national treasury of Arispe, and on the same day was referred to the supreme junta of Royal Hacienda for its approval; that before it could be approved the said supreme junta of Royal Hacienda was abolished, and no further proceedings were taken thereon till May 15, 1825, when Juan Miguel Riesgo, commissary-general of the State of the West, acting for and by authority of and in the name of the sovereign nation of the Mexican Republic, issued to said

21 grantees, the final testimonio or evidence of title of said grant, and the same was thereupon duly recorded on folio 3 of book No. 2, of the records of grants or sales of land for said year 1825.

That the original grant title or instrument of writing, by which said grant was conveyed to the aforesaid grantees, is not in the possession of or under the control of defendant, but is, together with other letters and papers relating to said grant, in the possession and custody of the United

States surveyor-general of the Territory of Arizona, at the city of Tucson, and that for this reason the said original document, constituting and creating said grant, is not herewith presented or delivered, but defendant forwards herewith, as exhibits 2 are parts of this answer, certified copies in Spanish of said original titulo and copies of the translation of the same, and defendant avers that said copies are correct and literal copies of said titulo and that said translations are correct translations of same.

Defendant avers that the map filed herewith, executed by Ygnacio Bonillas, esq., which map is made an exhibit to and part of this answer, is a correct map of said San Rafael de la Zanja grant or private land claim, and defendant avers that he owns in fee, by virtue of said grant title, all of said lands so designated by said map, and that the said grant comprises acres, as shown by said map.

That under the provisions of the eighth section of the act of Congress, approved July 22, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and other acts amendatory or in extension thereof or supplemental thereto, the successors in interest to the original grantees under said grant, filed on February 28th, 1880, in the office of the United States surveyor-general for the Territory of Arizona, their petition asking for the confirmation to them of the said San Rafael de la Zanja grant, accompanying which petition were the original title papers of said grant; that thereupon the United States surveyor-general
22 caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general, in his official report under date of April 28, 1880, to Congress on said grant, reported that the original expediente of the same, containing 37 pages, was found in the proper place in the archives of Mexico; that said expediente was written on the corresponding stamped paper and showed no cause for suspicion, and that there was no doubt as to the genuine character of the original title papers. Defendant avers that the reports of said special agent, Hopkins, and said United States surveyor-general fully establish the genuine character of the original title papers of said grant, but that no action was taken by Congress or by any authorities of the United States thereon.

That the statements in said reports of said Hopkins and said United States surveyor-general are true, and that said grant is and that at the time of the execution of the treaty known as the Gadsden treaty, was located and duly recorded in the archives of Mexico.

That defendant owns, holds, and possesses said grant under and by virtue of divers and sundry conveyances made by the original grantees of said grant and their grantees to defendant, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof defendant can furnish to this court if he should be by this court directed so to do.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and that at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

That the lands claimed by defendant are all the lands embraced within the original surveys of said grant to the boundaries established and described

therein, and that said lands are the lands embraced within the accompanying map of said grant filed herewith.

Defendant avers that each and every person in possession of any part of said grant is in possession thereof unlawfully and without the
23 permission of this defendant, and that any and all patents or other indicia or muniments of title, if any such there be, issued by the United States to any lands within the limits of said grant, were issued in contravention of law and are wholly null and void, so far as the rights of this defendant are concerned, for the reason that said grant is and at the time of the Gadsden Purchase was a complete and perfect title in fee in the owners thereof; that the United States never had any title to any part of said grant, and that none of the said patents or muniments of title, if any such there be, conveyed any title.

Defendant further avers that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in the grantees of said grant, and that said grantees immediately after the survey of the said tract of land, as set out in the title papers of said grant, went into the actual possession, use, and occupation of the whole of said tract of land, claiming title to the whole of said tract of land to the monuments described therein; that said grantees and their successors in interest have continuously remained in possession of all of said tract of land under such claim of title from the survey of said tract to the present time, and were in the open and exclusive and peaceable possession of all of said tract, claiming title to the whole of same at the time of the treaty between the Republic of Mexico and the United States of America; that said grant documents constituted a complete and definitive grant in fee by way of sale, coupled with the conditions subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and that this defendant is entitled to a confirmation or recognition of his title to said grant in accordance with the metes and bounds set forth in the original survey and grant of the same; that said grant was not a grant by quantity, but was a sale by the metes and bounds and natural landmarks established by the said survey thereof made by the Spanish officials prior to the issuance of same, and that it vested in the
24 grantees a perfect and valid title in fee to the whole of said tract so surveyed.

Defendant further avers that prior to said treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by anyone, and that none of the grantees or their successors in interest had prior to said treaty any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised;

and defendant further avers that if this honorable court should decide that said sale as recited in said title papers did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained.

Wherefore, defendant now tenders to the United States of America, and offers to deposit with the clerk of this honorable court for the United States of America, the sum of thirteen hundred and fifty-nine dollars in gold coin of the United States of America as payment for all such overplus or surplus of said lands in said grant, according to their quality and the price which governed when it was surveyed and appraised, and the further sum of two hundred dollars in like gold coin for the costs of ascertaining and determining the existence or nonexistence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender, and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for any such overplus or surplus, and prays that upon said payment
25 this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the ownership and possession of the whole of said tract, and defendant answering herein by reason of the fact that he has been made a party defendant prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee and the defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

ROCHESTER FORD,
Attorney for Defendant, Colin Cameron.

Filed in the office of the clerk, Court of Private Land Claims, Feb. 4, 1899. Jas. H. Reeder, clerk. By , deputy.

26 And be it further remembered that afterwards, to wit, on the 20th day of March, A. D. 1895, the same being the 3rd day of the March term, 1895, the following order was made by the court:

ALFRED A. GREEN
vs. } No. 2 San Rafael de la Zanja grant.
UNITED STATES ET AL.

It being suggested to the court by the attorney for the United States that one Harvey L. Christie has been asserting title and claim to the San Rafael de la Zanja grant or private land claim, which assertion *is* of claim or title is adverse to the United States, it is by the court ordered that said Harvey L. Christie be made a party defendant herein, and that he plead or demur to the petition herein within the time fixed by the rules

of this court, to wit, within thirty days after service of this order upon him.

(Minutes signed.) JOSEPH R. REED,
Chief Justice.

27 In the Court of Private Land Claims, Arizona district.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, et al., defendants.

Separate answer of Harvey L. Christie.

Comes now Harvey L. Christie, one of the defendants herein, by his counsel, and for separate answer to the petition herein denies that Alfred A. Green, plaintiff, has any right, title, or interest in or to the Rancho San Rafael de la Zanja, for the consum'ation of which he prays, or any right, title, or interest in or to any part thereof; and defendant denies that said Green is the holder, owner, or possessor of said grant or any part thereof, and alleges that before the institution of this suit he had parted with any title to or interest in said grant that he may at any time have possessed.

And, further answering, defendant avers that he is the owner in fee, holder, and possessor of that certain tract of land lying, being, and situate chiefly in the county of Pima, Territory of Arizona, and partly in the county of Cochise, in said Territory, commonly known as and called the San Rafael de la Zanja grant or private land claim, being the same grant mentioned in the complaint herein, and more particularly hereinafter described.

That defendant owns in fee, holds, and possesses such land under and by virtue of a certain instrument of writing now and hereafter designated as and being a grant title, bearing date the 15th day of May, 1825, duly made and executed by Juan Miguel Riesgo, commissary-general of the State of the West, in the name of the sovereign nation of the Mexican Republic.

28 That under and by virtue of the laws and decrees then in force such proceedings were thereunder lawfully and regularly had as that the Mexican Republic, acting by and through its proper and authorized officers, duly and regularly and for a good and valuable consideration, to wit, the sum of $1,297,6 reales and 5 grains, and for other good and valuable considerations in said grant title set forth and described on the 10th day of January, 1822, sold and conveyed in fee to one Ramon Romero and other citizens of the Presidio Santa Cruz the lands hereinbefore mentioned and more particually hereinafter described, known as the San Rafael de la Zanja grant.

That the proceedings resulting in the issuing of the title to the lands embraced in said grant were instituted by a petition dated July 19, 1821, to Brigadier Don Antonio Cordero, governor intendente of Sonora and Sinaloa, who was then the officer in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the jurisdiction of the presidio of Santa Cruz, in which jurisdiction the lands

thus petitioned for is situated; that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of intendentes of December 4, 1786, which instructions and ordinances defendant avers were continued in force by the Mexican Republic without any change whatever in them, and that on January 10, 1822, the tract petitioned for and as surveyed, according to the calls of the expediente thereof, was sold by the officers of the Mexican Republic to Ramon Romero and other citizens of the presidio of Santa Cruz, the grantees thereof, for the sum of $1,297, 6 reales, and 5 grains, which amount was thereupon, on January 11, 1822, paid by said grantees into the national treasury of the Mexican Republic; that the said sale was on said last-named date approved by the provisional junta of the national treasury of Arispe, and on the same day was referred to the supreme junta of royal hacienda for its approval; that before it could be approved the said supreme junta of royal hacienda was abolished, and no further proceedings were taken thereon till May 15, 1825, when Juan Miguel Ricago, commissary-general of the state of the West, acting for and by authority of and in the name of the
29 sovereign nation of the Mexican Republic, issued to said grantees, the final testimonio or evidence of title of said grant, and the same was thereupon duly recorded on folio 3 of book No. 2 of the records of grants or sales of land for said year 1825.

That the original grant, title, or instrument of writing by which said grant was conveyed to the aforesaid grantees is not in the possession of or under the control of defendant, but is, together with other letters and papers relating to said grant, in the possession and custody of the United States surveyor-general of the Territory of Arizona, at the city of Tucson, and that for this reason the said original document constituting and creating said grant is not herewith presented or delivered, but defendant forwards herewith, as Exhibits 2 are part of this answer, certified copies in Spanish of said original titulo and copies of the translation of the same, and defendant avers that said copies are correct and literal copies of said titulo and that said translations are correct translations of same.

Defendant avers that the map filed herewith, executed by Ygnacio Bonillas, esq., which map is made an exhibit to, are part of this answer, is a correct map of said San Rafael de la Zanja grant or private land claim, and defendant avers that he owns in fee by virtue of said grant title all of said lands so designated by said map, and that the said grant comprises 152,889.62 acres, as shown by said map.

That under the provisions of the eighth section of the act of Congress, approved July 22, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and other acts amendatory or in extension thereof or supplemental thereto, the successors in interest to the original grantees under said grant, filed on February 28th, 1880, in the office of the United States surveyor-general for the Territory of Arizona, their petition asking for the confirmation to them of the said San Rafael de la Zanja grant, accompanying which petition were the original title papers of said grant; that thereupon the United States sur-
30 veyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and

the said United States surveyor-general, in his official report under date of April 28, 1880, to Congress on said grant, reported that the original expediente of the same, containing 37 pages, was found in the proper place in the archives of Mexico; that said expediente was written on the corresponding stamped paper and showed no cause for suspicion, and that there was no doubt as to the genuine character of the original title papers. Defendant avers that the reports of said special agent Hopkins and said United States surveyor general fully establish the genuine character of the original title papers of said grant, but that no action was taken by Congress or by any authorities of the United States thereon.

That the statements in said reports of said Hopkins and said United States surveyor-general are true, and that said grant is and that at the time of the execution of the treaty known as the Gadsden treaty was located and duly recorded in the archives of Mexico.

That defendant owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by the original grantees of said grant and their grantees to defendant, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof defendant can furnish to this court if he should be by this court directed so to do.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and that at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

That the lands claimed by defendant are all the lands embraced within the original surveys of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant filed herewith.

Defendant avers that each and every person in possession of any part of said grant is in possession thereof unlawfully and without the
31 permission of this defendant, and that any and all patents or other indicia or muniments of title, if any such there be, issued by the United States to any lands within the limits of said grant were issued in contravention of law and are wholly null and void, so far as the rights of this defendant are concerned, for the reason that said grant is, and at the time of the Gadsden purchase was, a complete and perfect title in fee in the owners thereof; that the United States never had any title to any part of said grant and that none of the said patents or muniments of title, if any such there be, conveyed any title.

Defendant further avers that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in the grantees of said grant, and that said grantees immediately after the survey of the said tract of land as set out in the title papers of said grant went into the actual possession, use, and occupation of the whole of said tract of land, claiming title to the whole of said tract of land to the monuments described therein; that said grantees and their successors in interest have continuously remained in possession of all of said tract of land under such claim of title from the survey of said tract to the present time, and were in the open and exclusive and peac'able possession of all of said tract, claiming title to the whole of same at the time of the treaty

betweeen the Republic of Mexico and the United States of America; that said grant documents constituted a complete and definitive grant in fee by way of sale, coupled with the conditions subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and that this defendant is entitled to a confirmation or recognition of his title to said grant in accordance with the metes and bounds set forth in the original survey and grant of the same; that said grant was not a grant by quantity, but was a sale by the metes and bounds and natural land marks established by the said survey thereof made by the Spanish officials prior to the issuance of same, and that it vested
32 in the grantees a perfect and valid title in fee to the whole of said tract so surveyed.

Defendant further avers that prior to said treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by anyone, and that none of the grantees or their successors in interest had prior to said treaty any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holder in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and defendant further avers that if this honorable court should decide that said sale as recited in said title papers did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers, without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained.

Wherefore defendant now tenders to the United States of America, and offers to deposit with the clerk of this honorable court for the United States of America, the sum of thirteen hundred and fifty-nine dollars in gold coin of the United States of America as payment for all such overplus or surplus of said lands in said grant according to their quality and the price which governed when it was surveyed and appraised, and the further sum of two hundred dollars in like gold coin for the costs of ascertaining and determining the existence or nonexistence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender, and as aforesaid offers to pay said amount or any amount which may by this honorable court be adjudged to be due for any such overplus or surplus, and prays that upon said payment
33 this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the ownership and possession of the whole of said tract, and defendant,

answering herein by reason of the fact that he has been made a party defendant, prays that the validity of his said title may be inquired into and decided and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and the defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

FRANCIS J. HENEY,
Attorney for defendant Harvey L. Christie.

Filed in the office of the clerk Court of Private Land Claims, Feb. 4, 1899. Jas. H. Reeder, clerk. By R. L. Long, deputy.

34 And be it further remembered that afterwards, to wit, on the 4th day of February, A. D. 1899, the same being the 16th day of the January term, 1899, before the court sitting at Tucson, the following proceedings were had:

ALFRED A. GREEN
vs. } No. 2. San Rafael de la Zanja grant.
UNITED STATES ET AL.

By permission of the court, Rochester Ford, attorney for Colin Cameron, one of the defendants herein, withdrew the demurrer on file herein and filed amended answer.

The defendants, Colin Cameron and H. L. Christie, by their respective attorneys, produced in court the amounts of money described in their answer, and tendered the same for the purposes set forth in their answers on file herein.

It is ordered by the court that the U. S. surveyor-general for Arizona deliver to the clerk of this court, taking his receipt therefor, any and all papers on file in his office relating to the claim against the United States on file therein, commonly known and designated as the San Rafael de la Zanja grant.

The cause now came on for trial, Rochester Ford appearing for the defendant Colin Cameron and Francis J. Heney appearing for Harvey L. Christie; Matt. G. Reynolds, esq., U. S. attorney, appearing for the United States.

Y. Bonillas was called, sworn, and examined on behalf of defendants Cameron and Christie.

Certain documents were submitted in evidence, and appear among the files herein clearly marked by letter or number so as to be identified.

The further hearing was continued to the 6th day of February, when the following proceedings were had, to wit:

35 On motion of the U. S. attorney, it is hereby ordered that the following-named persons be made defendants in this cause and be forthwith served with summons and a copy of the petition herein, to wit: David Allen, D. G. Chalmers, W. C. Davis, C. T. Donavan, Richard Farrell, James Finley, Charles F. Harrison, V. H. Igo, Thomas J. Jeffords, R. N. Leatherwood, James McCarty, Neil McDonald, Frank Powers, R. R. Richardson, A. B. Sorrells, H. B. Tenney, Elizabeth A. O'Conner, Charles Murray, Frank Allison, Warren Allison, Antonio de la Oso,

Carlton B. Kelton, Francisco Samora, G. W. Crowe, James Bennett, Jesse Bland, Frank Hereford, Albert Steinfeld, G. B. W. Gardner, Nicholas Bersich, Richard Chapin, John Conner, Glis-San, Watkins Gittens, William E. Leek, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, James Parker, William Parker, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Elihu P. Vancuran, Henry Harrison, William Gittens.

The further consideration of this cause was suspended until May 15th, 1899.

The following is the evidence, both oral and documentary, offered and submitted on the 4th day of February, 1899:

36 UNITED STATES OF AMERICA, ss.

In the Court of Private Land Claims, Arizona district, January term, 1899.

ALFRED A. GREEN, PETITIONER,
vs.
THE UNITED STATES ET AL., defendants.
No. 2. San Rafael de la Zanja grant.

Transcript of trial.

Appearances:

No one appeared for the petitioner.

Matthew G. Reynolds, esquire, United States attorney for the Court of Private Land Claims, and William H. Pope, esquire, special assistant to the Attorney-General, for the United States.

Rochester Ford, esquire, for Colin Cameron.

Francis J. Heney, esquire, for H. L. Christie.

W. H. Barnes, esquire, for the other defendants.

On Saturday, February 4, 1899, at two o'clock p. m., this cause was called for trial, and the following proceedings were had therein:

37 Mr. Ford read the petition of the claimant; also the supplemental petition of claimant; also the answer of the Government; also the separate answer of Harvey L. Christy.

Mr. Heney, on behalf of Harvey L. Christy, one of the defendants, tendered to the United States, in open court, the sum of one thousand three hundred and fifty-nine dollars in American gold coin for the demasias included in the outboundaries of this grant as claimed by said defendant, and also the further sum of two hundred dollars in American gold coin to defray the necessary expenses of a survey of such demasias.

On motion of Mr. Ford, the same offer was by the court considered as made in behalf of Colin Cameron, a defendant in this cause.

Mr. Ford, on behalf of the defendants Christy and Cameron, offered in evidence a certified copy of the expediente of the San Rafael de la Zanja grant, under the certificate of the treasurer-general of the State of Sonora, dated March 9, 1894, which was marked "Exhibit F 1," for identification.

Mr. Ford then read Exhibit F 1.

Mr. Ford, on behalf of these defendants, offered in evidence "the original title to the San Rafael de la Zanja grant," dated May 15, 1825, which was marked "Exhibit F 2" for identification.

IGNACIO BONILLAS, a witness of lawful age, being produced, sworn, and examined on the part of these defendants, testified as follows:

Direct examination by Mr. FORD:

Q. State your profession.

38 A. I am a mining engineer and surveyor.

Q. What is your nationality?

A. I am a Mexican citizen.

Q. State what knowledge of and education in the Spanish language you possess, if any.

A. Spanish is my native language; I have studied it, speak it, and understand it.

Q. What acquaintance, if any, have you with the records in the office of the treasurer-general of the State of Sonora at Hermosillo, Sonora, Mexico, and on what is that knowledge based?

A. I have examined the records in that office; I have often had occasion to do so.

Q. To what extent did you make an examination of those records?

A. I have made a particularly thorough examination of them on different occasions.

Q. State whether you found among those records an expediente purporting to be the expediente of the San Rafael de la Zanja land grant?

A. Yes, sir; I examined that expediente in the records.

Q. State whether you made any search in the archives for a book in the files called "Book Number Two of Toma de Razon."

A. I believe I did look for that book.

Q. What was the result of the search?

A. I do not remember just now.

Q. Do you recollect whether it was in the office or not?

A. My recollection is that it was not there.

39 By Mr. FORD. I find, on refreshing my memory, that we have a stipulation with the Government that the testimony of Mr. Bonillas which was given in the Canoa case may be received in this San Rafael de la Zanja case, and I will file a copy of that stipulation.

Mr. Ford, on behalf of these defendants, then offered in evidence a deed of release from Innocencio Romero to Alfred A. Green, filed in the office of the recorder of deeds for Pima County, Arizona, March 29, 1881, which was marked "Exhibit F 3" for identification.

Also, a deed from Simon Ortega et al. to Alfred A. Green, dated March 18, 1881, which was marked "Exhibit F 4" for identification.

Also, a deed from Simon Ortega to Alfred A. Green, dated April 13, 1880, which was marked "Exhibit F 5" for identification.

Also, a deed from Innocencio Romero to Alfred A. Green, dated April 13, 1880, which was marked "Exhibit F 6" for identification.

Also, a deed from Dolores Romero to Alfred A. Green, dated March 16, 1881, which was marked "Exhibit F 7" for identification.

Also, a deed from Pedro Romero and others to Alfred A. Green, dated September 17, 1881, which was marked "Exhibit F 8" for identification.

Also, a deed from Dolores Romero to Alfred A. Green, dated April 16, 1880, which was marked "Exhibit F 9" for identification.

Also, a certified copy from the records of Pima County, Arizona, dated January 19, 1894, of a deed from Pedro Romero and others to Alfred A. Green, dated February 20, 1880, which was marked "Exhibit F 10" for identification.

The court then adjourned until ten o'clock a. m. next Monday (February 6) morning.

40 Monday, February 6, 1899, at ten o'clock a. m., the court met pursuant to adjournment and resumed the hearing of this cause in open court, as follows:

Mr. Reynolds presented, after filing, a motion of the Government that certain persons named therein, for the reasons stated therein, be made parties defendant and served with process, which motion, after argument, was allowed, and the court entered an order in accordance therewith.

Whereupon this cause was continued until such time as it should appear that the foregoing order had been complied with.

41 On February 9, 1899, it was stipulated in open court, by counsel for the claimants in the following cases: Hearst et al. vs. U. S. (San Juan de las Boquillas y Nogales grant), Camou vs. U. S. (San Rafael del Valle grant), Perrin vs. U. S. (Babocomari grant), and by counsel for the defendants Christy and Cameron in Green vs. U. S. (San Rafael de la Zanja grant), on the one part, and counsel for the government on the other part, that the following testimony of the witness Angel Elias shall be received and considered in the cases mentioned, subject, however, to the right of any adverse claimants and defendants in said cases, who are not now in court, to repudiate the same, and that they shall be afforded an opportunity to cross-examine this witness if they so desire.

ANGEL ELIAS, a witness of lawful age, being produced, sworn, and examined, testified as follows, through the medium of the official interpreter:

Direct examination by Mr. HENEY:

Q. Where do you reside?
A. In Fronteras, in Sonora.
Q. What is your business?
A. At present I am a farmer.
Q. How long have you been living at Fronteras?
A. Since the year 1863.
Q. When and where were you born?
A. I was born in Chihuahua. I do not recollect the date of my birth.
Q. How old are you?
A. Sixty years old.
Q. Did you ever live at this town of Tucson?
42 A. Yes, sir.
Q. How long ago was it, or when was it?
A. In the year 1850 I came here as a soldier.
Q. Do you know where the town of Santa Cruz is in Mexico—in Sonora?
A. Yes, sir; I know it.
Q. When were you first at Santa Cruz, if ever?

A. In 1853 I went to Santa Cruz as commander of the company there.

Q. In what capacity were you in the army in 1850 at Tucson—in the Mexican army?

A. I was a corporal of an esquadra.

Q. During the time you were acting or enlisted in the Mexican army from 1850 to 1854, did you pass over the country between Tucson and Santa Cruz?

A. Yes, sir.

Q. How many times?

A. Whenever it was necessary to render military service; because we were occupied between here and that place.

Q. Was it necessary very often to do that?

A. Continuously.

Q. And what was the service that was necessary to be performed so continuously?

A. To pursue the enemy whenever it became necessary and to pursue him to his strongholds.

Q. Who was the enemy?

A. The savage Indians.

43 Q. Were those the Apache Indians?

A. Yes, sir; the Indians that lived in the Chiracaqua and other mountains.

Q. What course did you generally take in going from Tucson to Santa Cruz in those raids after the Indians?

A. We pursued them to their strongholds, where it was necessary to attack them and to rout them.

Q. In going out from here, through what places would you pass between here and Santa Cruz?

A. We passed through Sonoita, through Babocomari, through San Pedro, and through other places where we considered we could take away from them the stolen property.

Q. Do you know a place called the Babocomari Valley?

A. Yes, sir; I know it.

Q. Did you know it from 1850 to 1854 by that name?

A. Yes, sir.

Q. Where is that valley?

A. That valley is between Tucson and Santa Cruz, to the south of the place where the railroad passes through Sonoita.

Q. Do you know where the town of Benson is, where you changed cars?

A. Yes, sir; I do.

Q. Do you know where the town of Fairbanks is?

A. Yes, sir.

Q. What grant, if any, did you know of in the vicinity of Fairbanks in those days, 1850 to 1854?

A. I did not know at that time any other grants except the grants that were possessed by the original owners, the same being the

44 Elias y Gonzales people.

Q. Did you know the Boquillas grant at that time?

A. Yes, sir; I knew it by the name of Las Boquillas y Nogales.

Q. Did you know the San Rafael del Valle grant at that time?

A. Yes, sir.

Q. Did you know the San Rafael de la Zanja grant at that time?

A. Also; yes, sir.

Q. Did you pass through all the four grants I have just mentioned, between the years 1850 and 1854, in pursuing the Indians?

Hereupon the Government objected to the form of the examination as leading, and because the question called for a categorical answer. Objection overruled.

A. I did; and I had several engagements with the Indians there?

Q. What was the condition of those grants as to their occupation from 1850 to 1854?

A. They were uninhabited on account of the Indians.

Q. Was there any stock upon them?

A. There were a few cattle and horses.

Q. On which grants?

A. At Babocomari; at Nogales, also called Boquillas; at San Pedro; at Palominos; at San Rafael, and all over that valley.

Q. Which San Rafael do you mean?

A. San Rafael del Valle.

Q. Were there any stock on the San Rafael de la Zanja at that time?

A. Also; there were a few cattle and horses.

Q. Describe fully the condition of that country in regard to
45 the Indians and Indian raids from 1850 to 1854.

A. In 1850 the garrison town of Tubac and the garrison town of Fronteras and the immediate ranchos were uninhabited.

Q. Why?

A. On account of resources; because the Government was not able to protect those peoples until about 1850. They began to protect them from the year 1850.

Q. Did you see any Indian raids or take part in any between 1850 and 1854 in that country? If so, state in detail how many Indians they were, in what number, and where they were, etc.

A. On the 18th day of June, 1852, I had my first engagements with the Indians right here at the old cemetery of this town in command of my own company stationed at Tucson. In 1853, I went to command the post at Santa Cruz. I was assigned to the rank of sergeant and commander of that post. At that time I went out with eighty cavalrymen against a band of four hundred Indians and attacked them at Palominos, and took away four hundred cattle from them and forty horses and I killed twenty-two Indians.

Q. When was that and where?

A. It was to the north of San Pedro about two or three leagues.

Q. North of the San Pedro River?

A. To the north of the San Pedro River.

Q. At which point?

A. It is near to the river; that is, where the old corrals and the old settlements were.

Q. Which ones do you speak of?

46 A. Palominos; at that place the ruins are still in existence where they corraled large numbers of cattle and stock.

Q. Where did you start from in going after these Indians?

A. From Santa Cruz? I was the commander at Santa Cruz.

Q. Was there anybody living then on the San Rafael de la Zanja?

A. No, sir; all of that place was abandoned.

Q. Do you know why there was no one living there?

A. On account of the war with the Indians.

Q. Wasn't it possible to live there?

A. No, sir; it was not possible, because the force to oppose them was very small.

Q. Was there anybody able to live in Arizona at that time outside of Tucson?

A. No, sir; not where they were not right under the military protection of the troops, except where they had means of protecting themselves.

Q. How many troops were there at Santa Cruz from 1850 to 1854?

A. There were only about fifty or sixty soldiers, and also the neighbors who would help the troops in case of necessity.

Q. How many people were living at Santa Cruz at that time?

A. There could not be over four or five hundred in all, of all sexes and ages.

Q. Were they doing any farming at Santa Cruz then?

A. Yes, sir; they did so under the protection of the soldiers who would go out with them to protect them while they were plowing
47 the fields.

Q. How far from the town was it safe to farm at all?

A. About half a league, and sometimes they were attacked even at the town itself.

Q. In what numbers, in how large bodies did the Indians come to attack in those days?

A. Sometimes they came in large numbers and sometimes they came in bodies of thirty or forty and attacked the place.

Q. Do you know where the custom-house of Palominos is, in Sonora, near the line of Cochise County?

A. No, sir; I have not gone there lately to that place. I was not here when that custom-house was established.

Q. Do you know where the custom-house is that is called San Pedro, with the Arizona line?

A. Do you mean the new custom-house?

Q. Yes, sir.

A. Yes, sir; I know the place called La Morita, and I, myself, came there personally to see the custom-house at La Morita.

Q. Do you know a custom-house at a place called San Pedro, west of La Morita near the San Jose Mountains?

A. Yes, sir.

Q. From that place where was this Palominos ranch or grant?

A. Towards the direction between the west and the north.

Q. What direction from San Pedro?

A. That is to the north of the San Pedro custom-house.

Q. Do you know where Jose Maria Elias lived in those days?
48 A. He lived at San Pedro.

Q. Is that the place where the Palominos ranch is?

A. No, sir; he lived at San Pedro.

Q. That Palominos ranch is north of that?

A. Yes, sir.

Q. Have you any interest in any of these grants that I have mentioned, the San Rafael de la Zanja, the San Rafael del Valle, the Babocomari, or the Boquillas y Nogales?

A. I do not have any interest, because, although I belong to that family, I do not know that I am connected with the ancestors, and I do not know about the titles.

Q. You do not claim to own any interest in these grants then?

A. So far as I am concerned I do not claim anything there, because I have nothing by which I could prove any property in those places. That is, I let them remain to those that have the titles.

Q. Do you know where the present town of Charleston is?

A. Yes, sir.

Q. What was that place known as; what was its name between 1850 and 1854?

A. We used to call it San Juan de las Boquillas y Nogales.

Q. That is at the locality where the ruins of the corrals and houses are in existence now?

A. Yes, sir.

Q. When you first saw that place, in 1850, were there any signs of occupation or habitation there; and if so, what?

A. No, sir; I did not see anything except a few corrals and
49 several mounds of stones that indicated they might have been the foundations of houses that were there.

Q. Describe those corrals.

A. These corrals were square corrals, or corrals in a square form; they were adobe corrals and the walls were somewhat high, coming up to my breast.

Q. How thick were the walls?

A. They were about ten inches thick.

Q. Did they show any evidences of ever having been used for cattle or horses?

A. Yes, sir; there was still a lot of manure there, indicating that they had used those places considerably.

Q. Did you see any signs of occupation on the Babocomari grant?

A. Yes, sir; there were some ruins of houses there yet.

Q. Where were they?

A. I thought you were asking me about Palominos—but there are also some corral ruins in Babocomari.

Q. Where are they?

A. They are opposite, a little to the left side of, the monument that is near the cienega.

Q. What does the term Boquillas mean?

A. It means a place where arroyos or gulches come out, and at that place on the San Pedro River several arroyos come out, and that is what is called Boquillas.

Q. What does Nogales mean?

A. It is a tree that bears nutmegs (the witness said nueces).
50 There were some trees of that species there.

Q. What kind of nuts?

A. We call them wall nuts or sweet nuts.

Q. Do you know what we call the walnut?

A. I think it is the same thing, but I do not know. I think it is the same nut I am now mentioning.

Q. Describe the nut.

A. It is very similar to what you call the walnut. We call it in Spanish las nueces de castilla.

Q. Were there any signs of occupation on the San Rafael del Valle grant?

A. No, sir; I did not see any. My impression is that, as the places adjoined the rancho Palominos, I believe the corrals of Palominos were used by both places in common.

Q. Did you see any signs of occupation on the San Rafael de la Zanja?

A. Yes, sir; I knew San Rafael de la Zanja, and it was the property of the inhabitants of Santa Cruz, and they had some stock there also.

Q. What signs of occupation did you see on it?

A. They had some temporary farms there, and some little corrals where they gathered their small flocks.

Q. Did you see any houses there.

A. Only those at San Rafael de la Zanja.

Q. Were there some at San Rafael de la Zanja?

51 A. Yes, sir.

Q. How many?

A. I do not remember how many there were. Some were in good condition and others in ruins.

Q. Did those in good condition give any evidence of having been occupied when you first saw them—occupied recently?

A. Yes, sir; they were occupied some, until on account of the attacks of the enemy they would have to abandon them for some while until it quieted down. In the vicinity of those houses they killed some of our settlers.

Q. When was it they killed those?

A. In 1854 or 1855 they killed some people there. They killed the Eslavas and other people out there after horses and other neighbors out hunting their stock.

Q. Were the Mexican troops still in Arizona at that time?

A. No, sir; we had already taken away the companies here at Tucson so the United States troops would come in.

Q. Did you ever join with the American troops or do you know of the Mexican troops joining with the American troops at any time pursuing the Indians or fighting them in that locality after the American troops came in here in 1854?

A. When the American troops came here I was the commander of the frontier of Sonora, and we had an understanding between the officers at Apache Pass and Fort Buchanan to help each other mutually. So much so that when the Indian chief Cochise attacked the wagon train coming from El Paso to Tucson and he destroyed the train, destroyed

52 *destroyed* the families and carried away about three thousand head of cattle; the commander at Apache Pass pursued them with two hundred cavalry and overtook them between the Dragoons and the box canon called la Sancedа, or the Chiricaqua Mountains.

Q. Those are in Sonora?

A. They are in Sonora. Seeing that he was pursued by the troops,

the Indian chief ran into the mountains where the cavalry could not pursue him. Seeing he could not pursue the Indians because he could not use his cavalry, the commander sent word to send him some troops. I was then at Fronteras. When I received the dispatch from the commander, I immediately ordered forty men to get ready and go in a hurry *to the assistance of the American commander, sending word at the same* time to the American commander to please not attack the Indians, but wait for me until I could collect my infantry and go to his assistance. I was then gathering in my infantry. When the company of cavalry that I had sent reached the place, they had already found that the lieutenant had been in a hurry and had already sent some scouts through the brush to attack the enemy. There were three men killed and one corporal of these American scouts. When my cavalry reached this place at night the enemy had already left this place after the attack. On the next day I arrived at the place with my three hundred infantry, which I had collected from my different posts, but when I reached the place the enemy was already gone. I forced marches to get there as soon as possible. Then I requested the American officer not to follow with his cavalry, but to let me follow the enemy with my infantry. But the lieutenant
53 was urging that he was anxious to go with me. I replied to him that a body of cavalry like his would be of no use to me in the mountains; that I needed all infantry. He agreed to this, but still he urged me to take ten cavalrymen and send three mules loaded with provisions with us. When it became dark I undertook my march over the mountains. I traveled all night, and in the morning I sent out my scouts to look out for the enemy. At about two o'clock in the morning the scouts returned and told me that the enemy was at the place called Cajon de los Pasos. In the early dawn I attacked the enemy. I took some of them prisoners. I took away the stock from the Indians and returned it to the commander at Apache Pass. From that place I wanted to go straight to my post, but the commander urged me to stay with him and I did so and he treated me very well, and from that place I withdrew to Fronteras with my men.

Q. Where was this pass where the fight took place?

A. At the Chiricaqua Mountains. It is the canon coming down or emptying out from the mountains near the place where the old fort was; when there was a freshet in the arroyo at that place one of the lieutenants of that fort by the name of Rucker was drowned. I used to carry on very friendly relations with him and I was sorry he was drowned.

Q. Where was the Apacha Pass from there?

A. It is above in the mountains, on that side of the place we used to call Las Dadas.

Q. Did you know a Mexican officer named Leon, who was killed out there somewhere?

54 A. Not at Chiricagua.

Q. Where was he killed?

A. Don Leonardo Leon was killed by the Indians of the chief Tutehe.

Q. When was that?

A. He was killed very shortly after Tutehe had started his rebellion.

Q. When was that?

A. He was killed a little time after—I do not know this except from

tradition; I do not know it of my own knowledge—but he must have been killed a little while after Father Robles was killed—about the year 1835. The same Indians who killed Father Robles killed Leonardo Escalante in going from Fronteras to Bacuache, called Puerto Mahavi.

Q. Was Leonardo Leon killed in battle?

A. Yes, sir.

Q. How many men were with him?

A. As I have been told by the old people who knew him well, he was at San Pedro with eleven men, and the message came to him from Babocomari that Tutehe had attacked the ranch. He sent a special messenger to Santa Cruz asking that the troops go to their rescue, and in the meanwhile the captain started to see if he would meet his reinforcements. He started with his eleven men, and not finding the troops he had sent for at the place he expected to meet them he returned and attacked the enemy with his eleven men. The Indian chief had about four
54½ or five hundred warriors with him, but notwithstanding this the captain engaged them and the eleven men were killed, and so was he. They cut his head off and they took it with them. Tutehe, the Indian chief who was besieging the ranch of Babocomari, knowing that Captain Leon was coming, went to rescue him, and ran to see if he could rescue him, but on arriving at the spot he found that he had already been killed by the Indians. He grew very angry with the Indians because they killed him, and told them that that kind of a man should not have been murdered. Then he ordered that his body should be taken and placed in the shade of an oak tree, but he could not recover the head. This man being killed and Colonel Narbona being killed, the Indians extended their expeditions all over the State, very near to Guaymas. In 1851 Mr. Presquera was defeated by a body of Indians of about five hundred warriors, who were carrying with them on their return trip from Sonora about five or six thousand head of cattle from Guaymas and Hermosillo. Mr. Presquera went out against these Indians with about one hundred men, well armed, and waited at the place called Ojo Hediondo. That was the place through which the enemy had to pass. The Indians had not seen Presquera, who was already occupying his position ready to fire on them. The stolen stock they were carrying with them in separate herds. As the first party arrived Presquera immediately engaged them, and he took the stock away; and then he engaged the second, third, and fourth parties and took away the stock from them. But the Indians, instead of running away, began to gather up in large numbers, and when the whole body of Indians
55 was together they attacked him. He offered resistance to them during the whole day and he had fifty of his men killed. They wounded twenty-five of his men, and he himself was wounded and his horse was killed. Having fought all day, it was simply the darkness of night that enabled him to withdraw, taking his wounded with him and his other men. The Indians also gathered in their wounded and dead and collected the stock again and retreated, carrying all the stolen stock with them again.

Q. Did they get away with this stock?

A. Yes, sir; all of it, and they also took the spoils from the men who were killed in battle.

Q. When did you say that was?

A. In 1851; the month of January.

Q. Is that the Presquera who was governor of Sonora?

A. Yes, sir; this was before he was governor. He was a man of influence in the place and he urged the people to unite, and the commander of the forces sent him with Federal troops.

Q. How far was that battle south of the present American line?

A. It is far; about twenty leagues.

Q. At the time of that battle, or between 1850 and 1854, at the time you had charge and you had battles with the Indians here, how were the Indians armed?

A. They were armed with all sorts of weapons. They had arrows and all sorts of firearms.

Q. What kind of rifles did they have.

A. They were armed with all sorts of arms, as I have said before.
56 Some of them were armed with these rifles that are muzzle loaders and others with repeating rifles and weapons that they had taken away from the people they killed. I would like also to say that in the year 1873 I was attacked, on the sixth day of March, by the Indians at San Jose, and I noticed they were very well armed then with very fine rifles, and this I know because when they attacked me and I offered resistance, they fought with a great deal of tenacity, and from that time on I noticed that the Indians were very well armed, because they had many Henry rifles. That was in 1873.

Q. Where is San Jose?

A. The bureau of organization of the military colonies of the State had just been gotten in order, and I had my forces armed with Winchesters, and at that place I fought a body of eighty Indians or more with twenty-two men.

Q. Where is that place San Jose?

A. At San Pedro, at the little hill called Cerrito de San Jose.

Q. Where the San Pedro grant is?

A. Yes, sir. That same year the son of the Indian chief Cochise, having with him a body of men two hundred strong, attacked me at my farm and drove me from the hill near the farm.

Q. Describe the corrals that you saw at Palominos between 1850 and 1854.

A. They were square-walled corrals of a great capacity; corrals in which perhaps two or three thousand head of cattle might have
57 been gathered in at a time.

Q. How far from Babocomari is the place where you had the fight with the Indians at the time you joined with the American forces?

A. It is far from Babocomari, towards San Pedro. I also fought the Indians at the place itself, at the place where the mule trains of Bisbe are at present. I defeated them many times there.

Q. Between 1850 and 1854?

A. No; it was after 1854. These latter engagements I have mentioned have taken place since the year 1860, and the engagements I had between 1850 and 1854 were here at this place, the Cienega de Heredia and at San Pedro. In the year 1863 I was attacked at a place near Fronteras by a body of Indians two hundred strong. I was protecting

a party of farmers there and they attacked me and I engaged them and defeated them.

Q. Where did these Indians come from, and where did they go to, who had the fight with Presquera which you have described?

A. They used to come from these ranches here, these Chiricaquas, from all the mountains near Chiricaquas. They had no fixed habitation; they did not live at a fixed place.

Q. Are the regular Apache Indians and the Indians raiding through Arizona at the time you were here from 1850 to 1854 the same tribe of Indians?

A. They were the same tribe.

Q. Were you ever on the eastern end of the Babocomari Valley?

A. Yes, sir; many times.

58 Q. Did you see any monuments there or was anything ever pointed out to you as a monument or descriptive point or land mark of the Babocomari grant?

A. The old people showed me two monuments to the east side. One was that on a high hill, rocky hill, and the other is on the other side on a little round bald hill or mesa, and these the old settlers told me were the monuments. I did not know this personally. I had not been born when the place was settled.

Q. Do you know the north monuments of the Santa Cruz, the pueblo of Santa Cruz?

A. Yes, sir.

Q. Did anybody ever point out to you what was called the north center monument of the pueblo of Santa Cruz?

A. No; I only knew how far the land of the people of Santa Cruz extended according to the statements of the old people.

Q. Where did they say it extended to?

A. Up to the place called Puerto de Canelo.

Q. Did you know the San Rafael de la Zanja grant in those days?

A. Yes, sir; ever since I came to this frontier I knew it from the old people and from the neighbors.

Q. Where was that from Santa Cruz?

A. From the Santa Cruz it was towards the upper part where the water—head streams—coming to Santa Cruz are.

Q. Who owned that grant?

A. As I have said before, I understood that the owner of all that tract was all the inhabitants of Santa Cruz; they bought their titles.

59 Q. So the people of Santa Cruz were claiming to own it and use it, were they?

A. Yes, sir; they occupied them until a large number of them sold their property.

Q. Were the boundaries told to you at that time by anybody in Santa Cruz, between 1850 and 1854?

A. When I came to Santa Cruz and began to travel over the country I would be told occasionally by the people, "Here is the end of this man's land and there is the boundary of that man's land." I came to Santa Cruz when it was quite young.

Q. Where did they tell you the boundaries of the San Rafael grant were, if at all?

A. They told me the boundary line was at the puerto del canelo, sloping towards the Babocomari, but except this they did not tell me where they were.

Q. Who was killed at the same time Padre Robles was killed?

A. Don Leonardo Escalante.

Q. Was there an Elias killed at that time?

A. Jose Maria Elias, Imichico.

Q. That was in what year?

A. I can not remember now, as I said before, when Father Robles was killed. It was about in the year 1833. But I know as to these things because they were related to me.

Q. Where was it Father Robles and Elias were killed?

A. He was killed at the place called Puerto de Mahavi, together with Don Escalante; and the officer Jose Maria Elias was killed
60 at Los Nogales. He was killed at that place by Tutehe.

Q. Jose Maria Elias was at that time the paymaster of the Mexican troops at Tucson?

A. Yes, sir; he was the son of this first one I have mentioned. He was paymaster here and the son of the other Jose Maria Elias mentioned by me a little while ago. He also was killed by the Indians at Santa Cruz.

Q. How far was that pass where Robles was killed from the Babocomari ranch?

A. It is far; perhaps twenty or twenty-five leagues.

Q. It is down in Mexico?

A. Yes, sir.

Q. Do you remember the circumstances connected with the killing of that Elias—I will ask you whether you remember the circumstances connected with the killing of Escalante?

A. Yes, sir. When the Indian Tutehe used to live at Bacuache, on account of some quarrel about some horses, he had a fight with Leonardo and in the fight Leonardo struck him with his whip and put out one of the Indian's eyes. When the Indian saw that he had lost his eye he swore vengeance against Leonardo. After a while he succeeded in having the Indian settlements around those places engaged in rebellion with him. After having revolted, he began to make his incursions with the Indians, especially into the frontier. During one of his inroads he met Leonardo and Father Robles, and at the Puerto de Mahavi he seized both of them. And then he told Leonardo, pointing to his eye,
61 "See that eye?" and then he ordered that both of his eyes be put out. And after his eyes were put out, he ordered that the palms of his hands should be scraped, and then he had him castrated. And Father Robles standing by, the poor fellow used to ask him to help him, but the Indian chief Tutehe was telling him to go away. The priest, hearing the cries of the poor man in his anguish, would return to help him. And then the soles of his feet were scraped, and after this operation was performed they compelled him to walk for about one hundred varas. Finally the Indians succeeded in having Father Robles go away but as these Indians were there about the place in large numbers, when he had traveled about one hundred yards the priest was caught by some Indians of the party, who killed him. Then the military forces went after the Indians until they succeeded in driving them back here.

Cross-examination by Mr. POPE:

Q. You spoke of the Palominos. Is that at the present time in Mexico or in Arizona?

A. It is in Arizona.

Q. At what place?

A. I do not know in what place in Arizona, but it is near the boundary line.

Q. What river was it near?

A. The houses are near the boundary line.

Q. How far from the boundary line?

A. I can not state exactly how far they are from the line, because I have not returned there to see the monuments as they stand there

62 now.

Q. When were you there?

A. I have not been at Palominos for a long time; I ceased traveling over that country before the line was readjusted.

Q. When was that? When was it readjusted?

A. I think it was two or three years or four years—I think you are better posted on that than I am.

Q Two, three, or four years ago?

By the INTERPRETER. He says the monuments are established there and you ought to know.

Q. Is this ranch on or near any river?

A. It is at the edge of the river San Pedro that runs to Charleston.

Q. Do you know where the present place of San Pedro is in Mexico?

A. It has been where it always has been, at the old ranch of San Pedro.

Q. Is that in Mexico or in Arizona?

A. It is in Mexico.

Q. How far from the boundary line?

A. It is about three or four leagues.

Q. Is that where the old ranch house is?

A. Yes, sir; there are some old houses and old granaries still left there.

Q. How far is the ranch of Palominos from that place?

A. I have said that it is about two or three leagues distant.

63 Q. In what direction?

A. That is downwards on the stream, running to the north.

Q. And you say San Pedro is three or four leagues from the line?

A. That is what I estimate. The monuments are there in view now. They are iron monuments. It can be very well estimated, because nobody would dare to take them off. It is not practicable to say what the distance is from one point to another, unless a man goes out and walks over it.

Q. The ranche of Palominos is north from San Pedro and down the river from it?

A. Yes, sir.

Q. How far down the river does it extend? Isn't it true that it extends down to Charlestown?

A. I do not know, but I think not, because it is at the ranch of San Rafael del Valle, and beyond it is the monuments that mark the boundary between the ranch of Palominos and San Rafael del Valle.

Q. When did you first know the ranch of Palominos?

A. Since the year 1850 I have been acquainted with all these lands, and I have repeated already that it is since the year 1850 that I have traveled over those places and know those lands.

By Mr. HERRING (to the interpreter). Didn't he say that the ranch of Palominos did not reach to Charleston because the San Rafael del Valle was between?

By the INTERPRETER. No, sir; that is not my recollection.

Q. How close is Palominos to Santa Cruz?

A. I do not know positively. As I have gone over these lands
64 in a hurry and almost always at night, I can not estimate how far it is.

Q. Then most of your travel has been by night over these lands?

A. The greater portion by night and always in a hurry, because otherwise I would not have attained the object of my mission, that is, to combat the enemy. If I had undertaken to perform these duties during the day, I would not have achieved my object, and I would lose my sleep and have my troops lose their sleep, and thus would not accomplish my object.

Q. When you went through that country, you were usually in a hurry?

A. Yes, sir; as it was necessary. Some times I would go out with my infantry, and some times with my cavalry from la Canonia, and we would attack the enemy at Las Mulas.

Q. You spoke about having killed twenty-two Indians?

A. Here at Palominos, between Palominos and San Pedro, where the Indians had killed a man, I was pursuing them to take away some stolen stock they had carried with them. I attacked them and beat them at Palominos, and killed twenty-two men?

Q. What year was that?

A. In 1853; the same year I went from here to command at Santa Cruz.

Q. You say you killed twenty-two men?

A. Yes, sir.

Q. Did you kill them personally or did the people with you kill them?

A. No, sir; I could not kill them myself. My men killed
65 them. I commanded my men, and they followed my orders. I gave my orders to my men, and would direct the battle and see that my positions were secure.

Q. How many men did you have under you then?

A. I had eighty cavalrymen.

Q. What was your military office at that time?

A. I was first sergeant commanding the company at Santa Cruz, and there my appointment came as first ensign of the company at Santa Cruz.

Q. What year was it you got your commission as first ensign?

A. That same year; in 1853, after this engagement at Palominos. It was sent to me by Santa Ana.

Q. He was President at the time?

A. Yes, sir.

Q. You live now where?

A. In Fronteras, Sonora. That was an old garrison town.

Q. How far is that from the international boundary?

A. It is about twenty-two or twenty-three leagues.

Q. How did you happen to come up here to Tucson in this case?
A. I was asked from here.
Q. Mr. Camou came for you?
A. Yes, sir.
Q. Do you know Juan Pedro Camou, of Guaymas?
A. Yes, sir; I know him.
Q. He is a claimant of the San Rafael del Valle grant?
A. That is what I also understand.

66 Redirect examination by Mr. HERRING:

Q. What is the land called between Palominos and Charleston, on the San Pedro River?

A. That is what is called San Rafael del Valle. It is what they call now San Rafael del Valle. I knew it as Palominos, but they call it San Rafael del Valle, and I suppose it is the same place.

Recross-examination by Mr. POPE:

Q. When you were down there you understood what is now San Rafael del Valle to be the same as Palominos?

A. That is what I always understood as far back as I have any recollection.

67 I, Vernon Beggs, acting official stenographer of the Court of Private Land Claims, do hereby certify that the above and foregoing is a full, true, and correct transcript of all the proceedings had in this cause, upon the trial of the same had at the January, 1899, term of the Court of Private Land Claims, held in Tucson, Arizona, as disclosed by my shorthand notes taken at and during the trial of said cause.

VERNON BEGGS,
Acting Official Stenographer of the Court of Private Land Claims.
ST. LOUIS, MO., *February 24, 1899.*

68 F. EXH. 1.

[Seal treasurer-general State of Senora.]

Ano de 1894. Testimonio del rancho denominado "San Rafael de la Zanja."

[Revenue stamp 50 cents.]

Una estampilla de cincuenta centavos. March 5, 1894. Al Tesorero General del Estado de Sonoro. Rochester Ford, vecino del Tucson, Territorio de Arizona, en representacion del Sr. Colin Cameron, ante Ud., con el debido respeto comparexco y expongo: que el Senor Colin Cameron siendo dueno del rancho "San Rafael de la Zanja" y no teniendo el expediente de dicho rancho y teniendo necesidad de poseer una copia de dicho expediente para su conviemiento y resguardo pido se sirva Ud. mandarme una copia el dicho expediente, propiamente certificada para los usos que el Senor Colin Cameron crea conveniente. Protesto no proceder de malicia, &c. Rochester Ford. Tucson, Arizona, March 5, 1894. Vale para el bienio de 1820 y 1821. Un sello que dice: Carolus IV. Hispaniarum Rex. D. G. Un sello que dice: Fernando

VIII G. D. M. Anos D. 1814, 1815. S. 3. Dos Reales. Otro sello que dice: Fernando VIII G. D. M. Anos D. 1816, 1817. S. 3. Dos reales. Otro sello que dice: Fernando VIII D. G. M. Anos D. 1818, 1819. S. 3. Dos reales. Sello tercera dos reales, anos de mil ochocientos diez y ochocientos once. Sor. Gobernador Yntendente. D. Manuel Bastillo, vecino del Presidio de Santa Cruz, ante la superiodad de V. S. con el respeto debedo y como mas haya lagar en derecho paresco y digo: que teniendo un competente numero de ganado caballar y vacuno, necessito de terreno para su conservacion y procreo para cuyo fin registro tres sitios de tierro en el mismo Presidio de me domicilio, a remate y fuera de las medidas que la quieran asignar por la parte del Norte, y un sitio mas para estancia en el paraje del Cajoncito por el lado del Oriente por lo que suplico a V. S.? que para la mensura del expresado terreno se sirva mandar las ordenes de estilo a quien sea de sa agrado: y Sor que el Comisionado tenga presente en su avalno que el terreno que solicito esta lindando con el pais de los enimigos Apaches por la parte en que hasta el dia no han dejado de hostilizar. Por tanto A. V. S. pido y suplico se sirva mandar hacer como pido en lo que recibire merced y justicia yuro no sea de malicia y lo necesario, &c. Sor. Gobernador Yntendente. Manuel Bustillo. Rubrica. Arizpe, Julio 19 del 1821. Por presentado y admitido sin perfuicio de tercera que mejor derecho tenga. El comandante de la compania de Santa Cruz procedera a la medicion de los terrenos que el presentante registra, citando a los colindantes, y nombrara peritos valuadores que hagan su justiprecio; el cual pregonara por treinta dias solicitando postores y practicara todas las diligencias de estilo hasta poner el expediente en estado de remitirmelo para las que se han de actuar en este jurgado privativo a fin de espedirle el titulo de merced correspondiente. Cordero—Santa Cruz, 4 de Octubre de 1821. Auto de aceptacion. Habiendoseme presentado por D. Manuel Bustillo de esta vicinidad el presente decreto, extendido en 19 de Julio po. po. por el Senor Gobernador Yntendente Brigadier Don Antonio Cordero, dije: que aceptaba como desde luego acepte la comision contenida en el indicado decreto, debia de mandar y mande, que previa citacion del interesado y colindantes y acompanado de los oficiales necesarios que al efecto se nombraran, se pase por mi el dia de manana a dar principio a las medidas de los cuatro sitios para cria de ganado mayor en el puesto de la Zanja segun corresponde. Por este auto que se hara saber a las partes interesadas asi lo prover mande y firme yo el Comisionado Don Simon
69 Elias Gonzales Capitan de la compania que guarnece este puesto con testigos de asistencia, a falta de escribano que no lo hay en los terminos que el derecho previene. Simon Elias Gonzales. A., Lorenzo Sortillon. A., Ramon Romero (rubricas). Notificacion a las partes interesadas. En el mismo dia mes y ano yo dicho comisionado, siendo presente Don Manuel Bustillo como interesado; y Jose Garcia Manso procurador del comun del vecindario de este Presto, les notifique a hece saber el decreto que antecede de que quedaron entendidos, y dandose por citadose; el primero por parte, y el segundo por colindar, los terrenos solicitados a los egidos de este Presidio, lo firmaron con migo y testigos de asistencia en la forma ordinaria. Simon Elias Gonzales, Manuel Bustillo. A., Lorenzo Sortillon. A., Ramon Romero (rubricas). En el Presidio de Santa Cruz en el citado dia cuatro de Octubre de mil ocho-

cientos veinte y uno, yo, el expresado comisionado, a efecto de proceder a las medidas del terreno citado y nombramiento de oficiales; lo verifique en Don Jose Antionio Calbo, para contador en Tomas Gauna par apuntador y en Felipe Jaramillo y Leandro Romero para medidores, todos individuos de este vecinidad quienes estando presentes aceptaron dichos encargos, prestando cada uno de por si el juramento de estilo por Dios Huestro Senor y una senal de curz de usar bien y fielmente sus oficios sin dolo frande ni encubierta alguna segun su leal saber y entender y lo firmaron con migo y testigos de asistencia en la forma ordinaria. Simon Elias Gonzales, Antonio Calbo, Tomas Gauna. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Nombramiento de oficiales, su aceptacion y peramento—y reconocimiento del terreno. En el puesto de la Zanja a los cinco dias del mes de Octubre de mil ocho cientos veinte y uno, yo, el dicho comisionado habiendome trasladado al citado punto con los oficiales nombrados y testigos de asistencia, mande que ante todas cosas, se haga inspeccion y vista del terreno, registrandolo muy por menor por ambos rumbos y despues de bien reconcido, halle ser un paraje yermo y despoblado el valle de arboles, con bajios y hablones de tierras de secana por escaces de agua corriente para riegos. Y para que conste lo ponga por diligencia que firme con los de asistencia a falta de Escribano segun derecho. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero. Diligencia de medidas. Yncontinenti dicho dia, mes y ano el mismo comisionado para dar principida la mensura de cuatro sitios par cria de ganado mayor denunciados por Don Manuel Bustillo de este vicinidad, entregue una cuerda de isble encerada y estirada a los offciales nombrados, asi como tambien una vara castellana en la cual se midieron, y contaron en me presencia, cincuenta varas usuales, y hecha esta operacion se amarraron en ambos extremos una hasta; y puestos en el punto centrico que fijo el denunciante con el nombre de San Rafael, pidio que respecto a que el paraje de los cajoncitos que solicitaba para instancia se habia reconocido quedaba para instancia se habia reconocido quedaba dentro de los egidos de este Presidio, se le agregase a los tres sitios que tenia solicidados en dicho terreno; y siendo justo su pedimento, se dio principio a la mensura rumbo al Norte para donde se tiraron y midieron doscientos cordeles que remataron en una mesa a orrilas de un arroyo que corre para el penasco, al pie de una bellota en la que se labro una cruz; y amas se puso en su tronco un gran monton de piedras en senal de mohonera; vuelta al centro se fieron midiendo para el Sur otros doscientos cordeles que remataron a la salida de la canada del Potrero, en el mismo Punto, en donde se halle la mojonera de los egidos de este Presidio; asi a la parte del norte: Vuelto al centro se midi-eron y contaron para el Oriente doscientos cordeles que remataron pasada la citada canada del Potrero en una mesa contigua, donde se puso un gran monton de piedras en senal de mojonera; y vuelto al centro se midieron rumbo al poniente, ciento treinte y tres cordeles a causa de que los sesenta y siete restantes para el completo de los doscientos, no fue posible ejectutarlo por la espereza del terreno, pero se graddo rematarian sobre la sima de un cerro alto que se halla en la cordillera, de la sierra de la Plomosa, casa entre Sur y Poniente del cerrito conocido por el caloso, senalandose desde luego, su sima por mojonera; en cuya disposicion, su suspendio esta operacion por ser ya tarde

para confirmar con las cuerdas el dia de manana y para que conste lo pongo por diligencia que firmaron con migo y testigos de asistencia los aficiales, de los nombrados que lo saben hacer y parte interesada en la forma ordinaria. Simon Elias Gonzales, Antonio Calvo, Manuel Bustillo A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Continuacion de medidas. En el expreasdo punto de San Rafael a los seis dias del citado mes y ano, yo, el propio comisionado a efecto de dar las cuerdas correspondientes al terreno medido el dia de ayer aompanado de los oficiales nombrados, pase al punto donde remataron, los doscientos cordeles, rumbo al Norte desde cuyo mojonera se graduaron rumbo al oriente por la aspereza del terreno, doscientos cordeles que remataron a la punta de la sierra del Cobre sobre un agnaje conocido por el carricillo donde debe ponerse la mojonera esquina: asi como al pie de un cerro colorado que se descubre en un claro que media enter el penasco y cerros de Sonoita, el que debe servir de mojonera, graduadas otras doscientos cuerdas, por lo aspero del terreno, rumbo al poniente que remataron: desde cuyo punto se graduaron rumbo al Sur por la sierra de la Plomosa, cuatrocientos cordeles hasta pasado el puerto de San Antonio, sobre dos cerritos que hacen esquina a estos sitios: desde aqui rumbo al Oriente se midieron y contaron doscientos cordeles que remataron en la mojonera del Norte de los Citados egidos; que se halla donde sale al valle la canada del Potrero, de donde continando la curdra rumbo al Oriente se midieron otras docientos cuerdas que finalizaron sobre el Yaralito, en la mojonera esquina de los terrenos ya reptidos del Presidio: de aqui para el Norte se graduaron cuatrocientos cordeles por la designaldad del terreno que deben finalizar sobre el agnaje del carricillo, con cuyas medidas quedo formado el cuadro, de los cuatro sitios registrados por Don Manuel Bustillo, para cria de ganado mayor, dandose por recibido de ellos y advertido que oportunamente debe senalar sus linderos con mojoneras de cal y canto segun esta prevenido, y lo firmo con migo, oficiales nombrados que lo saben hacer y testigos de asistencia en la forma ordinaria. Simon Elias Gonzales, Manuel Bustillo A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Diligencia de avaluo y a precio del terreno. En seduida yo el mismo comisionado a efecto de que se aprecion las tierras mensuradas por mi a favor de Don Manuel Bustillo sitas en San Rafael de la Zanja compuestas de cuatro sitios para cria de ganado mayor, dije que nombrada y nombre por tales avaluadores a de Olejo Bodolla y a Tomas Gauna, que hizo oficio de apuntador en estas medidas cuyo terreno tienen bien vista y reconocido por menor, quienes hallandose presentes les hice saber dicho nombramiento que aceptaron y juraron en toda forma por Dios nuestro Senor y una senal de cruz de usar bien y fielmente su oficio sin dolo frande ni encubierta alguna, y en su virtud dijeron de conformidad, que segun el reconocimiento que tenen hecho del referido terreno, hallan y graduan en sus conciencias pueden valer tres de echos sitios que tienen agua permanente a sesenta pesos cada uno, y el cuarto que puede beneficiarse por noria treinta pesos segun su leal saber y entender, en fuerza del juramento prestado; y habiendoles leido esta diligencia se afirmaron y
71 ratificaron en lo dicho y lo firmo Gauna con migo y testigos de asistencia a falta de escribano segun derecho. Simon Elias Gonzales, Tomas Gauna. A., Lorenzo Sortillon; A., Ramon Romero (rubri-

cas). Auto para que se proceda a los pregones. En el Presidido de Santa Cruz, a los diez dias del mes de Octubre de mil ochocientos veinte y uno, yo el mismo comisionado, en vista de las antecedentes diligencias de medidas y avaluo de las tierras de San Rafael de la Zanja comprensivas de cuatro sihios para cria de ganado mayor, dije: se saquen al pregon por treinta dias consecutivos segun se previene por la superioridas admitiendo en ellos las pujas y mejoras que resulten y por este auto asi lo provey, mande y firme con los testigos de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Primer Pregon. En el Presidio de Santa Cruz, dicho dia, mes y ano, yo el mismo comisionado, hice que a son de caja se combocasen en la plaza publica de este Puesho, muchos individuous de el, y en presencia de todos los concurrentes dijese Juan Antonio Rodriguez que hace oficio de pregoneo en muy altas y claras voces. Las tieras del puesto nombrado San Rafael de la Zanja, sitas en este jurisdiccion y comprensivas de cuatro sitios para cria de ganado mayor mensuradas a favor de D. C. Manuel Bustillo de este vicinidad, avaluadas en doscientos diez pesos se venden de cuenta del real patrimonio quien quisiere hacer postura ocurra a formalizarla ante mi, donde sera admitida la que haga y no habiendo resultado postor alguno se puso por diligencia que firme con los de mi asistencia en la forma ordinaria segun derecho. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 2d Pregon. En el mismo Presidio, a los once dias del citado mes y ano, se dio otro pregon idual ep todoy con las mismas formalidades del anterior y no habiendo resultado postor se puso por diligencia que firme con testigos de asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 3 Pregon. En dicho Presidio, a los doce dias de dicho mes y ano, se dio otro pregon igual al anterior y no habiendo resultado postor se puso por diligencia que firme con los testigos de mi asistancia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 4 Pregon. En dicho presidio, a los trece dias de dicho mes y ano, se dia otro pregon igual al anterior; y no habiendo resultado postor se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 5 Pregon. En el mismo presidio, a los catorce dias del citado mes y ano, se dio otro pregon como los anteriores y no habiendo resultado postor se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 6 Pregon. En dicho Presidio, a los quince dias del referido mes y ano, se dio otro pregon como los anteriores y no habiendo resultado postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 7 Pregon. En el mismo presidio, a las dos diez y seis dias del referido mes y ano, se dio otro pregon como los anteriores y no habiendo habido postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 8 Pregon. En el citado Presidio, a los diez y siete dias del citado mes y ano, se dio otro pregon como los anteriores y no habiendo resultado postora se puso por diligencia que firme en la forma ordinaria. Simon Elias Gonzales; A., Lorenzo Sortillon;

A., Ramon Romero (rubricas). 9 Pregon. En el citado Pre-
71½ sidio, a los diez y ocho dias del referido anes y ano, se dio otro pregon en la misma forma que los anteriores y no habiendo resultado postura se puso por diligencia que firmo con los de mi asistencia *en la forma ordinaria. Simon Elias Gonzales.* A., *Lorenzo Sortillon*; A., Ramon Romero (rubricas). 10 Pregon. En dicho Presidio, a los diez y nueve dias del citado mes y ano, se dio otro pregon como los anteriores y no habiendo resultado postor se puso pos diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 11 Pregon. En el referido Presidio, a los veinte dias del citado mes y ano, se dio otro pregon en la misma forma que los anteriores y no habiendo resultado posteria se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 12 Pregon. En el referido Presidio, a los veinte y un dias del referido mes y ano, se dio otro pregon como los anteriores y no habiendo resultado postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 13 Pregon. En dicho Presidio, a los veinte y dos dias del citado mes y ano, se dio otro pregon en la misma forma que los anteriores y no habiendo resultado postura, se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 14 Pregon. En dicho Presidio, a los veinte y tres dias del citado mes y ano, se dio otro pregon con las mismas formalidades que los anteriores; yo no habiendo resultado postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 15 Pregon. En dicho Presidio, a los veinte y cuatro dias del mismo mes y ano, se dio otro pregon con las mismas formalidades que los anteriores; y no habiendo resultado postor se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 16 Pregon. En dicho Presidio, a los veinte y sinco dias del citado mes y ano, se dio otro pregon como los anteriores y no habiendo habido postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 17 Pregon. En dicho Presidio, a los veinte y seis dias del referido mes y ano, se dio otro pregon como los anteriores y no habiendo habido postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 18 Pregon. En dicho Presidio, a los veinte y siete dias del citado mes y ano, se dio otro pregon en la forma que los anteriores y no habiendo resultado postura se puso por diligencia que firma con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 19 Pregon. En dicho Presidio, a los veinte y ocho dias del citado mes y ano, se dio otro pregon como los anteriores y no habiendo habido postura se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 20 Pregon. En dicho Pre-

sidio, a los veinte y nueve dias del referido mes y ano, se dio otro pregon en la misma forma que los anteriores; y no habiendo resultado postor se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Simon Elias Gonzales. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Santa Cruz, 20 de Octubre de 1821. Respecto a tener que trasladarme a la capital de Arizpe de orden superior a asuntos del servicio, entreguese el presente expediente en el estado en que se halla al Comandante Interino Alferez de Jose Pesqueira para
72 que en su prosecucion se den los diez pregones que faltan; que concluidos procedera a recibir la informacion de idoneidad del interesado y verificado lo remetira a la Yntendencia de la Provincia con citacion de la parte y para su constancia lo firme el citado mes y ano con los de mi asistencia segun derecho. Simon Elias Gonzales, Lorenzo Sortillon. A., Ramon Romero (rubricas) 21 Pregon. En el referido Presidio a los treinta dias del citado mes y ano se dio otro pregon en la misma forma que los anteriores y no huvo postor, lo que puso por diligencia conforme a la comision que se dio para ello y consta de la antecedente diligencia y lo firme con los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 22 Pregon. En dicho presidio a los treinta y un dias del citado mes y ano se dio otro pregon en la misma forma que los anteriores y no habiendo resultado postor, se puso por diligencia que firme on los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas), 23 Pregon. En el referido Presidio en primero de Noviembre del mencionada ano, se dio otro pregon, y no habiendo habido postor, se puso pro diligencia, que firme con los de mi asistencia la forma ordinaria. Jose Pesquiera. A., Lorenzo Sortillon; A., Ramon Romero (rubricas), 24 Pregon. En el dicho Presidio a los del citado mes y ano se dio otro pregon en la misma forman que los anteriores, y no habiendo resultado postor, se puso por diligencia que firme con los de mi assistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 25 Pregon. En el mismo presidio a los tres dias del citado mes y ano se dio otro pregon en la misma forma que los anteriores, y no habiendo habido postor, se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas), 26 Pregon. En dicho presidio a los cuatro dias del mencionado mes y ano se dia otro pregon como los anteriores y no huvo postor, se puso por diligencia que firme con los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). 27 Pregon. En dicho presidio, a las cinco dias del citado mes y ano, se dio otro pregon in la misma forma que los anteriores, y no habiendo resultado postor, se puso por diligencia que firme con los de mi assistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas), 28 Pregon. En dicho presidio a los seis dias del referido mes y ano, se dia otro pregon como los anteriores, y no habiendo resultado postor se puso por diligencia que firma con los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas), 29 Pregon. En dicho Presidio a los siete dias del referido mes y ano se dio otro en la misma forma que los anteriores, y no habiendo resultado postor, se puso por diligencia que firme con los de mi asistencia en la forma ordinaria.

Josch Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas).
30 Pregon. En dicho Presidio, a los ocho dias del referido mes y ano, se dio otro pregon como el anterior, y no habiendo resultado postor, se puso por diligencia, que firme con los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Diligencia para la idoncidad del interesado.

En el Presidio de Santa Cruz, a los nueve dias del citado mes y ano, yo, dicho comisionado, en atencion a estar concluidas estas diligencias de medidas, avaluo y pregones y solo falta la informacion que debe dar de u idoneidad la parte interesada de tres testigos segun esta prevenido; notifiquesvele los ponga de manifesto hara proceder a dicha averi-
73 gnacion para que conste lo pongo por diligencia que firme con los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas). Notificacion Y incontinente, siendo presente, le hice saber a D. Manuel Bustillos el auto que antecede y en su vista presento los testigos que se le piden, y lo firmo con migo y los de mi asistencia en la forma ordinaria. Jose Pesqueira. A., Lorenzo Sortillon; A., Ramon Romero (rubricas.) Declaracion del 1er testigo. En el Presidio de Santa Cruz a los nueva dias del referido mes y ano, yo, el mismo comisionado, en complimento de lo prevenido en el auto que antecede, y habiendo presentado B. Manuel Bustillo por testigo al sargento de esta compania Dolores Jacome, en su persona le recibi juramento que hizo por Dios nuestro Senor y una senal de cruz, por el cual de ofrecio decir verdad en lo que supiere y le fuere preguntado; y siendole sobre si el citado D. Manuel Bustillo tiene proporciones para poder poblar el puesto de San Rafael de la Zanja que ha registrado para cria de ganado mayor, dijo: que sabe y el consta tiene un numero considerado actualmente de ganado vacuno y caballada con que poder poblar el citado terreno, que es cuanto puede decir y sabe sobre el particular, y es la verdad la cargo el Juramente que tiene prestado en que se afirmo y ratifico leida que le fue esta se declaracion: manifesto ser de edad de cuarenta y cinco anos, y que no le tocan las generales de la ley y lo firmo con migo y los testigos de mi asistencia con quienes actuo a falta de Escribano segun derecho. Jose Pesqueira. A., Ygn'o Pragelis Carrillo; A., Ramon Romero (rubricas). Declaration del 2° testigo. En dicho Presidio dicho dia mes y ano, yo, el mismo comisionado, recibi juramento en debida forma a Ygnacio Medina segundo testigo que ha presentado D. Manuel Bustillo por el cual ofrecio decir verdad en la que supiere y fuere preguntado; y siendolo sobre si el citado Bustillo tiene proporcion para poder poblar el Puesto de San Rafael de la Zanja que ha registrado para cria de ganado mayor dijo: que sabe y le consta que en dicho terreno tiene introducido un considerable numero de ganado vacuno y caballada con que esta poblado, que es cuanto sabe sobre el particular, y es la verdad a cargo del juramento que tiene hecho, en que se afirmo y ratifico, leida que le fue esta declaracion. Manifesto ser de edad de cuarenta anos, y lo firmo con migo y testigos de asistencia con quienes actuo a falta Escribano segun derecho. Jose Pesqueira. Ygn'o Medina. A., Ygn'o Pragelis Carillo; A., Lorenzo Sortillon (rubricas). Declaration del 3er testigo. En el referido Presidio dicho dia mes y ano, habiendo presentado D. Manuel Bustillo al tercer testigo Jose Antonio Garcia invalido de esta compania, yo, el referido comisionado, le recibi

juramente por Dios Nuestro Senor y una senal de Cruz, por el cual ofrecio decir verdad en lo que supiere y la fuere preguntado, y siendole se el citado Bustillo tiene proporciones para poblar el puesto de San Rafael de la Zanja que ha registrado para cria de ganado mayor, dijo: que le conste que le mismo terreno ha introducido un considerable numero de ganado vacuno y caballada con que lo tiene poblado, que es cuanto puede decir y sabe sobre el particular, y es la verdad a cargo del juramento que tiene hecho en que se afirmo y ratifico leida que la fue esta su declaracion: manifesto ser de edad de cincuenta y cuatro anos y que no le tocan las generales de la ley y por no saber firmar, hicelo yo con los testigos de mi asistencia como dichoes: Jose Pesqueira. A., Ygn'o Pragedis Carrillo; A., Lorenzo Sortillon (rubricas).

Diligencia de estar concluido este expediente y remision al Gobierno con citacion de la parte. En el Precidio de Santa Cruz a los doce dias del citado mes y ano, yo, el mismo comisionado, debia de mandar y
74 mande que hallandose concuido este expediente se remita al Sor. Yntendenta de la Provincia con citacion de la parte interesada a fin de que, frasladandose a la capital de Arizpe, asista a las ultimas tres almonedas y remate de las citados tierras que ha de verificarse en la Junta establecida en aquella capital y para constancia lo firme con los de mi asistencia en la forma ordinaria. Jose Pesqueira. De A., Ygn'o Carrillo; De A., Lorenzo Sortillon (rubricas). Notificacion. En el mismo precidio dicho dia, mes y ano, yo, el referido comisionado, siendo presente D. Manuel Bustillo, le notifique e hice saber el anterior decreto, y dandose por citado al remate que debe ejecutarse en la capital de Arizpe, lo fiirmo conmigo y los de mi asistencia en la forma ordinaria. Jose Pesqueira. De A., Ygnacio Carrillo; De A., Lorenzo Sortillon (rubricas). Razon. En cuatro de deciembre, de mil ochocientos de veinte y uno, se dia cuenta con este expediente en doce pojas utiles al Senor Yntendente de la Provincia y para que conste lo rubrique (rubrica). Acompano a V. el expediente de tierras registrados en este Presidio por Manuel Bustillo, habiendo citado al interesado para su respectivo remate, de que me trata V. en su oficio 17 del corriente que contesto. Dios guarde a Vd. muchos anos. Santa Cruz, 30 de noviembre de 1821. Juan Olejo Carrillo. Sor. Yntendente Ynterino D. Ygnacio de Mustamente. Arizpe, diciembre 11 de 1821. Al Promotor Fiscal. Bustamente (rubrica). Sor. Yntendente Ynterino. El Promotor Fiscal de esta Yntendencia, da visto con detenida atencion este expediente de tierras mensuradas a favor de D. Manuel Bustillo vecino del Presidio de Santa Cruz, por el comisionado D. Simon Elias Gonzales, capitan y comandante de dicho puesto, en el paraje nombrado San Rafael de la Zanja en aquella misma jurisdiccion, de la que resultaron cuatro sitios para cria de ganado mayor y caballada, los que fueron valuados por dos peritos que al efecto se nombraron, a razon de sesenta pesos, tres de ellos por tener agua corriente y el cuarto por carecer de esta, y solo ser venediciado por noria en treinta pesos cuyas dos sumas hacen la de doscientos diez pesos, y habiendolos sacado el pregon por treinta dias consecutivos, no resulto postor alguno que mejerarse dicho avaluo. En seguida se procedio a recibir las tres informaciones de estilo, las que acreditan tener el interesado Bustillo, suficientas proporciones para mantener poblado y amparado el terreno; en tal virtud, pide el que responde se sirva Vd. si lo tuviere a bien man-

dar celebrar las tres publicas almonedas en esta capital convocado postores y rematandose el terreno en el mayor y mas aventajado que resulte, haciendole entender, debe enterar en esta Tesoreria Nacional el total valor de las tierras, su media annata 18% de su conduccion, 2 por ciento mandado exigir por punto general y los tres pesos correspondientes a los oficiales de la extinguida contaduria del Ejercito, expidiendosele la necesaria certificacion que acredite dicho entero, la que debera unirse a este expediente y darse cuenta con el a la Junto Superior de Hacienda para la resolucion que tenga a bien tomar; no obstante de este mi parecer subordinado al de Vd. puede determinar lo que le paresca mejor. Arizpe, diciembre 20 de 1821. Fran'co Perez (rubrica). Arizpe, 7 de enero de 1822. Como parece al Promotor fiscal de esta Yntendencia en su antecedente respuesta; procedase a la celebracion de las tres publicas almonedas de estilo para el remate de las tierras de que trata este expediente previa citacion de interesados. El Sor. Yntendente Ynterino asi lo decreto y mando, firmando con testigos de asistencia a falta de scribano. Bustamente (rubrica). M. A., Jose Maria Mendoza; A., Joaquin Elias Gonzales (rubricas).

75 Yncontinente siendo presente D. Manuel Bustillo se le notifico la antecendente repuesta fiscal decreto de conformidad, de que quedo inteligenciado y lo firmo con el Sor. Yntendente y testigos de su asistencia. Bustamente. M., Manuel Bustillo. A., Jose Maria Mendoza; A., Joaquin Elias Gonzales (rubricas). 1ª Almoneda, en la ciudad de Arizpe a los ocho dias de el mes de enero de mil ochocientos veinte y dos, convocados en junto de almonedas el Sor. Yntendente Ynterino, como presidente de ella, y los vocales que la componen a efecto de celebrar la primera de las a que se contraen estas diligencias, hicieron que a sonda caja se remitiesen en el oficio de esta Yntendencia muchos individuos, y que en su presencia procediese el pregonero Loreto Salcido a dar, como efectivamente dio un pregon en altas y claros voces, diciendo: "Van a rematarse en esta junto de almonedas cuatro sitios de tierra realenga para cria de ganado mayor, comprendidos en el paraje nombrado San Rafael de la Zanja, sito en jurisdiccion del Presidio de Santa Cruz; mensurados en favor de su denunciante D. Manuel Bustillo, y apreciados en doscientos diez pesos, a razon de sesenta pesos tres de dichos sitios, y el restante en treinta. Quien quicere hacer postura al indicado realengo, ocura a formalizarla ante esta Junta donde se le admitira la que con regularidad hiciere; en inteligencia de que en la tercera y ultima almoneda que ha de practicarse el dia de pasado manana, debera alebrarse el remate en el mejor postor. En cuyo acto comparecio D. Ramon Romero y por si y a nombre de los vecinos del expresado puesto militar de Santa Cruz, hizo la puja de diez pesos mas del citado justiprecio, la cual le fue inmediatamente mejorada por D. Manuel Bustillo, que tambien ocurrio, con cuyo motivo se fueron alternativamente mejorando las posturas una a otro de dichos postores hasta acender la ultima a la cantidad de mil doscientos pesos hecha por D. Ramon Romero." Y siendo ya dada la plegaria de las doce de este dia sin haber parecido mejor postor se concluido esta diligencia que para la debida constancia firmaron los Senores Presidente y vocales de esta Junta de Almonedas. Bustamente, Escalante, Puentes, Perez (rubricas). 2ª Almoneda. En la misma ciudad a los nueve dias del expresado mes y ano, se celebro la segunda almoneda de las tierras a que se contrae este expediente, igual en todo a

la primera antecedente, con solo la diferencia de anunciar al publico que D. Ramon Romero, por si, y por los vecinos de Santa Cruz, tiene hecha la postura de mil y doscientos pesos, mas no occuriendo otro postor alguno, se instruyo esta diligencia que firmaron los senores de la misma Junta. Bustamente, Escalante. Puentes, Perez (rubricas). 3ª Almoneda. En la ciudad de Arizpe a los diez dias del mes de enero de mil ochocientos veinte y dos: convocados en Junta de almonedas el Senor Presidente y vocales que la componen, con objeto a celebrar la ultima de ellas para el remate de que se trata, se dio un pregon por media de Loreto Salcido igual en todo al que consta de la segunda almoneda antecedente; con solo la diferencia de anunciar al publico que ahora mismo ha de quedar celebrado. En cuyo acto solo comparecio el expresado D. Ramon Romero reciterando su ofrecimiento de mil doscientos pesos por las nominados tierras, y siendo ya dada la plegaria de las doce de esta dia sin resultar otro mejor postor dijo por ultimo pregonero: "A la una, a las dos, a las tres: Que se remata, que se remata, que se remata, que buena, que buena, que buena, pro la haga a Dn. Ramon Romero y vecinos del Presidio de Santa Cruz." En tales terminos se concluyo este acto, que dando solemnemente rematados los cuatro sitios de tierra realenga que comprende al parage nombrado San Rafael de la Zanja de que tratan estas giligencias, a favor del referido Romero y vecinos de Santa Cruz por la cantidad de mil y doscientos pesos y para constancia se sento esta diligencia que con el mismo interesado firmaron los
76 Senores Presidente y vocales de esta junta de almonedas. M., Bustamente, Escalante, Fuentes, Perez, Ramon Romero (rubricas). Arizpe, 10 de enero de 1822. Pase este expediente, con el testimonio que comprende las superiores determinaciones que rigen en la materia, a Dn. Ramon Romero, para que dentro de tercera dia proceda a deducir lo que le ocurra en el asunto: notificandosele nombre en Mexico sugeto abonado y expensado que se encargue de agitarlo en aquella corte, El Senor Yntendente Yterino asi lo decreto y firmo con testigos de asistencia a falta de escribano. Bustamente (rubrica). M. A., Jose Ma. Mendoza. A., Joaquin Elias Gonzales (rubricas). Razon. En este dia se entrego el expediente en los terminos prevenidos en 16 pojas utiles. Senor Yntendente Yterino. Dn. Ramon Romero, por si, y por los vecinos del Presidio de Santa Cruz, ante Vd. parezco diciendo: que haciendo pronta y fiel devolucion de este expediente, y del testimonio que por separado se me ha entregado, procedo a manifestar que respecto a hallarse estas actuaciones arregladas en todo a las superiores determinaciones que rigen en la materia, comprendidos en dicho testimonio, soy muy conforme con ellas hasta su actual estado de remate; y en consecuencia pido a Ud. se sirva providenciar el pronto curso de este expediente hasta su perfecta conclusion, a fin de que aprobado que sea por la junta Superior de Hacienda, se libre el correspondiente titulo de merced y confirmacion a nuestro favor de las tierras de San Rafael de la Zanja de que tratan estas diligencias: estando como estamos pronto a nombrar en Mexico sugeto abonado y expensado que agite el negocio en aquella capital. Por tanto a Ud. pido y suplico se sirva proveer conforme solicito, pues en ello recibire con mis partes gracia y merced. Juro lo necesario, etc. Ramon Romero (rubrica). Auto en vista. En la ciudad de Arizpe a los once dias del mes de enero de mil ochocientos veinte y dos: el Senor

Yntendente Ynterino de esta Provincia de Sonora y Sinaloa, Dn. Ygnacio de Bustamente, habiendo visto estas diligencias de medidas, aprecio, pregones, almonedas y remate de los cuatro sitios de tierra realenga para cria de ganado mayor, que comprende el parage nombrado San Rafael de la Zanja, sito en jurisdiccion del Presidio de Santa Cruz, rematados a favor de Dn. Ramon Romero y demas vecinos del mismo puesto militar. La respuesta dada por el propio Romero en su antecedente escrito, con todo lo demas que consta y ver convino, dijo: que declarando, como declara por bastantes, conformes y arregladas en todo las indicadas diligencias; y admitiendo, como desde luego admite a composicion con la hacienda macional por el expresado terreno a los referidos Dn. Ramon Romero y vecinos de Santa Cruz: debia mandar y mando se notifique y hagar saber al primero, proceda a enterar en la caja publica de esta ciudad la cantidad de mil doscientos noventa y siete pesos seis reales cinco granos en esta forma: mil y doscientos pesos en que por esta Yntendencia se les remataron dichas tierras: selenta pesos seis reales cinco granos por el derecho de media annata, y su diez y ocho por ciento veinte y cuatro pesos respectivos al dos por ciento mandado exegir por punto general; y los tres pesos restantes por derechos de la contaduria extinguida del mismo ramo y realizado que sea tal entero, proniendose la correspondiente certificacion que lo acredite en esta expediente, se dara cuenta con el mismo a la Junta Superior de Hacienda para su aprobacion, o la resolucion que convenga. Y por este auto en vista asi lo determino, mando y firmo con testigos de asistencia a falta de escribano. Ygnacio de Bustamente (rubrica). A., Jose Maria Mendoza; A., Joaquin Elias Gonzales (rubricas). Yncontinente fue presente el citado D. Ramon Romero y en su persona se le notifico el auto que antecede, de que quedo inteligenciado y lo firmo con el Senor Yntendente Ynterino y testigos de su asistencia a falta de escribano. Bustamente. A., Jose Maria Mendoza; A., Joaquin Elias Gonzales (rubricas). Junta Provincial de la Hacienda Nacional y Arizpe, 11 de enero de 1822. Vistos: Declarense desde luego por legal, publico y solemnemente rematados los cuatro sitios de tierra para cria de ganado mayor que comprende el paraje nombrado San Rafael de la Zanja, sito en jurisdiccion del Presidio de Santa Cruz; a favor de Dn. Ramon Romero y demas vecinos del mismo puesto militar, por la cantidad de mil y doscientos pesos. Y en consecuencia dese cuenta con este expediente a la Junta Superior de Hacienda conforme tiene providenciado esta Yntendencia en su antecedente auto en vista. Asi lo acordaron y firmaron los Senores de esta Junta Privincial. Bustamente, Escalante, Puente, Perez (rubricas). Senor Yntendente ten'te de tesor'o, cont'or. Ynt'o, Prom'tor fiscal. M., Arizpe, 11 de enero de 1822. Cumplase lo requelto por la Junta Provincial en su acuerdo de hoy. Bustamente (rubrica). Los Ministros Principales de la Tesoreria Nacional de Arizpe y su Privincia. Certificamos: Que al folio 3 del libro manual del actuo ano, sentamos la partida siguiente. Enero 11. Son cargo = un mil doscientos noventa y siete pesos seis reales cinco granos, enterados por Dn. Ramon Romero por si y por los demas vecinos del Presidio de Santa Cruz en esta forma: 1.200 P's. por el principal valor en que se les han rematado por esta Yntendencia cuatro sitios de tierra realenga para cria de ganado mayor que comprende el parage nombrado San Rafael de la Zanja sito en juris-

76½

diccion del nominado Presidio: 70 p's, 6 r's, 5 g's, por el derecho de media armata y su 18% de conducion a Espana: 24 p's respectivos al dos p% mandado exigir por punto general; y los 3 p's restantes por derechos de la contaduria extinguida del citado ramo, segun explica el oficio de la Yntendencia que senala el n'o 1. . . . $1,297,6,5. Escalante, Puente, Ramon Romero. Y para que conste donde convenga damos la presente. Arizpe, once de enero de mil ochocientos de veinte y dos. Tomas de Escalante, Miguel Ma. de la Puente (rubricas). Se expedio titulo de este expendiente en 19 de mayo de 1825 a favor de los interesados Don Ramon Romero y demas vecinos de Santa Cruz (rubricas). E. R. P'a. 7'a vuelta. Notificacion. Vale.

Es testimonio fiel y legalmente sacado del titulo original o sea la matriz que existe en el archivo de esta Tesoreria General esta corregido y cotejado en estas doce fojas de papel cubiertas con las estampillas correspondientes, anadiendo que todas las fojas de que se compone la matriz estan en el papel sellado correspondiente, el que autorizo y firmo en la ciudad de Hermosillo, capital del Estado de Sonora, Mexico, a los nueve dias del mes de marzo de mil ochocientos noventa y cuatro.

V. Aguilar.

Rafael Yzabal, vice gobernador constiticional del estado en ejeicicio del Poder executir: Certifico que el Senor Don Victor Aguilar es como se titula Tesorero General del Estado de Sonora y suya la firma que antecede.

Hermocillo, marzo 13, 1894.

Rafael Yzabal.

[Revenue stamp, ten cents.]

Ramon Corral, *Jno.*

77 [Revenue stamps, $1.00.]

Victor Aguilar, Tesorero General del Estado de Sonora, Republica de Mexico, certifico que el libro de tomas de razon correspondiente al ano de 1825 no existe y que las firmas que cubren la matriz o diligencias primordiales del rancho denominado "San Rafael de la Zanja" son genuinas y por lo mismo merecen toda fe y credito.

Y para que conste doy la presente en la ciudad de Hermosillo, a los nueve dias del mes de marzo de mil ochocientos noventa y cuatro.

V. Aguilar.

Tesoreria General del Estado de Sonora Carto de pago num. 232, certifico que el Senor Bartolome Rochin entero en esta oficina la suma $5, 20 centavos, incluso el 30% federal por la legalizacion de firme que hace el Sor. Gobernador del Estado de la del Tesorero General del mismo.

Hermosillo, marzo 9 de 1894.

El Tesorero General,
V. Aguilar.

[Revenue stamps, $1.20.]

(Endorsed:) Filed in the office of the Clerk, Court of Private Land Claims, February 4, 1899. Jas. H. Reeder, clerk. Exhibit (Land Court) F. 1.

78 OFFICE OF SURVEYOR-GENERAL,
Tucson, Arizona, January 8th, 1894.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[SEAL.] LEVI H. MANNING,
U. S. Surveyor-General, District of Arizona.

79 F. EXHIBIT 2.

Titulo de merced de cuatro sitios de tierra para cria de ganado mayor comprendidos on el puesto nombrado San Rafael de la Sanja, sito en jurisdiccion del presidio de Santa Cruz; espedido á favor de D. Ramon Romero y demas parcioneros vecinos del propio presidio.

80 Sello segundo 12 reales. [SEAL.] Años de 1825 y 26.

Juan Miguel Riesgo, comisario gral. de hacienda, credito publico y guerra del Estado interno de occidente.

Por cuanto el articulo 81 de la ordenanza de Yntendentes de 4 de diciembre de 1786, confirió á estos Magistrados el conocimiento y jurisdiccion de medidas, rentas y componsiones de tierras de sus respectivos distritos, cuyo tenor á la letra es como sigue:

Arto. 81. Tambien seran los Yntendentes Jueces privativos de las dependencias y causas qe. ocurriesen en el distrito de sus provincias, sobre rentas, composiciones y repartimientos de tierras realengas y de señorio, debiendo los posecdores y los qe. pretendan nuevas concepciones de ellas, deducir sus dros. y formalizar sus solicitudes ante los mismos Yntendentes, pa. qe. instruidos lejitimamente estos negocios con un promotor de mi real fisco qe. nombren, los determinen segun dro. con dictamen de sus acesores ordinarios, y admitan las apelaciones á la junta superior de hacienda, ó la dén cuenta en defecto de interponer recurso los Yntendentes con los autos originales cuando los estimen en estado
81 de despachar el titulo, á fin de qe. vistos pr. ella se los devuelvan, ó bien pa. qe. la expidan sino se la ofrece reparo, ó pa. qe. antes de efectuarlo, evacuen las diligencias qe. hechare menos la Junta y les previniese; mediante lo cual podran recaer sin nuevos embarazos las correspondientes confirmaciones qe. librará á su debido tiempo la misma Junta Superior, procediendo ella en el asunto, como tambien los Yntendentes, sus subdelegados y demas con arreglo á lo dispuesto en la real instruccion de 19 de octubre de 1794, en cuanto no se opongan á lo resuelto pr. esta, sin perder de vista las saludables dispociciones de las Leyes qe. que en ella se citan, y de la 9, titulo 12, libro 4. En su consecuencia, y habiendo hecho formal reintegro en 19 de julio de 1821, D. Manuel Bustillo vecino del Presidio de Santa Cruz, ante el Sor. Gobernador, Yntendente que fue de Sonora y Sinaloa, Brigadier D. Antº. Cordero, de cuatro sitios de tierra para cria de ganado mayor en el puesto nombrado de la Sanja, sito en jurisdiccion del mismo presidio; le fue admitido conforme á dro. dando comision bastante al comandante de aquella compa., Capitan D. Simon Elias Gonsalez, para la correspondiente mensura, cuyo escrito, proveido y auto de obedecimiento son como siguen:

Sor. Gobernador Yntendente: Don Manuel Bustillo, vecino del
82 Presidio de Santa Cruz, ante la superioridad de V. S. con el respeto debido y como mas haya lugar en dro. paresco y digo: Que teniendo un competente numero de ganado caballar y Bacuno, necesito de terreno para su conservacion y procreo, pa. cuyo fin registro tres sitios de tierra en el mismo presidio de mi domicilio, á remate, y fuera de las medidas qe. le quieran asignar por la parte del Norte y un sitio mas pa. estancia en el paraje del cajonsito por el lado del oriente por lo q. suplico á V. S. qe. pa. la mensura del expresado terreno se sirva mandar las ordenes de estilo á quien sea de su agrado; y Sor., que el comisionado tenga presente en su abaluo qe. el terreno qe. solicito esta lindando con el pais de los enemigos Apaches por la parte en qe. hta. el dia no han dejado de hostilizar portanto: Á V. S. pido y suplico se sirva mandar hacer como pido en qe. recibiré merced y justicia juro no ser de malicia y lo necesario. Sor. Gobernador Yntendente. Manuel Bustillo.

Arispe, julio 19 de 1821. Por presentado y admitido sin perjuicio de tercero que mejor dro. tenga. El comandante de la compañia de Santa Cruz procedera á la medicion de los terrenos qe. el presentante
83 registra, citando á los colindantes, y nombrará peritos valuadores qe. hagan su justiprecio; el cual pregonará por treinta dias solicitando postores; y practicará todas las diligencias de estillo hta. poner el espediente en estado de remitirmelo, pa. las qe. se han de autuar en este Jusgado privativo á fin de espedirlo el titulo de merced correspondiente. Cordero.

Santa Cruz, 4 de octubre de 1821:

Auto de aceptacion. Habiendoseme presentado por D. Manue, Bustillo de esta vecindad, el presente decreto estendido

Sello cuarto un cuartillo. [SEAL.] Anos de 1825 y 1826.

en 19 de Julio procsimo pasado por el Sor. Gobernador Yntendente Brigadier D. Anto. Cordero, dije q. aceptava, como desde luego acepte la comision contenida, en el indicado decreto, debia de mandar y mandé, qe. previa citacion del interesado y colindantes, y acompañado de los oficiales necesarios, qe. al efecto se nombrarán, se pase pr. mi el dia de mañana, á dar principio á las medidas de los cuatro sitios para
84 cria de ganado mayor en el puesto de la Sanja segun corresponde. Por este auto qe. se hara saver á las partes interesadas, asi lo prove y mandè, y firmé yo, el comandante D. Simon Elias Gonsalez, Capitan de la compañia que guarnece este puesto con testigos de asistencia, á falta de escribano qe. no lo hay en los terminos q. el dro. previene. Simon Elias Gonsalez. De assa., Lorenzo Sortillon; de assa., Ramon Romero.

Seguidamente procedió el propio comandante á la citacion de la parte y colindantes, y al nombramiento de los oficiales respectivos, qe. lo fueron D. Jose Anto. Calvo para contador, Tomas Gauna pa. apuntadr. y Felipe Jaramillo y Leandro Romero pa. medidores, quienes bajo de juramento en forma ofrecieron bien y fielmente sus encargos, segun su leal saber y entender; y con previa vista y reconocimiento del terreno,

practicó las medidas en los dias 5 y 6 del citado octubre de 1821, en los terminos qe. constan de las siguientes diligencias:

Diligencia de medidas. Yncontinente dho. dia, mes y año, el mismo comisionado para dar principio á la mensura de cuatro sitios para cria de ganado mayor, denunciados por D. Manuel Bustillo de esta vecindad, entregué una cuerda de istle encerada y estirada á los oficiales nombrados, asi como tambien una vara castellana, en la cual se mi-
85 dieron y contaron en mi presencia, cincuenta varas usuales, y hecha esta operacion, se amararon en ambos extremos una hasta; y puestos en el punto séntrico que fijó el denunciante con el nombre de San Rafael, pidió qe. respecto á que el paraje de los cajoncitos, qe. solicitara pa. instancia, se habia reconosido, quedaba dentro de los ejidos de este presidio, se le agregase á los tres sitios, q. tenia solicitados en dho. terreno, y siendo justo su pedimento se dió principio á la mensura rumbo al Norte, para donde se tiraron y midieron doscientos cordeles q. remataron en una mesa á orillas de un arroyo qe. corre pa. el peñasco, al pie de una Bellota, en la que se labro una cruz, y á mas se puso en su tronco un gran monton de piedras en señal de mojonera: buelto al centro se fueron midiendo pa. el Sur otros doscientos cordeles, qe. remataron á la salida de la cañada del potrero, en el mismo punto, en donde se halla la mojonera de los egidos de este presidio, asi á la parte del Norte: buelto al centro se midieron y contaron pa. el Oriente doscientos cordeles, qe. remataron, pasada la citada cañada del potrero, en una mesa consigua, donde se puso un gran montoh de piedras en señal de mojonera; y
86 bueltos al centro, se midieron rumbo al Poniente, ciento treinta y tres cordeles, á causa de qe. los setenta y siete restantes, pa. el completo de los doscientos, no fue posible ejecutarlo pr. la aspereza del terreno, pero se graduo rematarian, sobre la cima de un cerro alto qe. se halla en la cordillera, de la Sierra de la Plomosa, casi entre Sur y Poniente, del cerrito conosido pr. el caloso, señalandose desde luego, su cima por mojonera; en cuya disposicion, se suspendió esta operacion pr. ser ya tarde para continuar con las cuerdas el dia de mañana, y pa. qe. conste lo pongo pr. diligencia qe. firmaron conmigo y testigos de Assa. los oficiales, de los nombrados qe. lo saben hacer y parte interesada; en la forma ordinaria. Simon Elias Gonsalez, Anto. Calvo, Manuel Bustillo. assa., Lorenzo Sortillon; de assa., Ramon Romero.

Continuacion de medidas. En el espresado puesto de San Rafael á los seis dias del citado mes y año, yo, el propio comisionado á efecto de dar las cuerdas correspondientes al terreno medido el dia de ayer acompañado de los oficiales nombrados, pasé al punto donde remataron, los doscientos cordeles, rumbo al Norte desde cuya mojonera, se graduaron
87 rumbo al Oriente por la aspereza del terreno, doscientos cordeles qe. remataron á la punta de la sierra del cobre, sobre un agua-

je conocido por el carrisillo, donde debe ponerce la mojonera esquina: asi como al pie de un cerro colorado, que se descubre en un claro qe. media entre el peñasco, y cerro de Sonoyta, el qe. debe servir de mojonera, graduadas otras doscientas cuerdas, por lo aspero del terreno, rumbo al poniente qe. remataron: desde cuyo punto se graduaron rumbo al Sur pr.

la sierra de la Plomosa, cuatrocientos cordeles, hta. pasado el puesto de San Antonio sobre dos cerritos qe. haces esquina, pa. la parte del Poniente á los egidos de este presidio cuya punta debe de xervir de mojonera esquina á estos sitios: desde aqui rumbo al Orinte se midieron y contaron doscientos cordeles que remataron en la mojonera, del Norte de los citados egidos, qe. se halla donde sale el valle, la cañada del Potrero, de donde continuando la cuadra rumbo al Oriente se midieron otras doscientas
88 cuerdas, qe. finalizaron sobre el Jaralito, en la mojonera esquina de los terrenos ya repetidos del presidio de aqui pa. el Norte se graduaron cuatrocientos cordeles por la desigualdad del terreno, qe. deben finalizar, sobre el aguaje del carrisillo, con cuyas medidas quedó formado el cuadro, de los cuatro sitios registrados por Don Manuel Bustillo, pa. cria de ganado mayor, dandose por recibido de ellos, y advertido que oportunamente debe señalar sus linderos con mojoneras de cal y canto segun está prevenido, y lo firmó conmigo, oficiales nombrados que lo saben hacer y testigos de assa. en la forma ordinaria. Simon Elias Gonsalez, Manuel Bustillo. De assa., Lorenzo Sortillon; de assa., Ramon Romero. Yncontinente procedió el propio comandte. al correspondiente avaluo por medio de peritos inteligentes, qe. lo fueron D. Alejo. Bedoya y Tomas Gauna quienes juramentados en forma de dro., lo hicieron segun los conocimientos qe. tenian de todo el terreno y con arreglo á las superiores disposiciones de la materia, dando el valor de sesenta ps. á cada uno de los tres sitios q. tienen agua permanente, y el de treinta pesos al restante pr. ser solo susceptible del beneficio de Noria. Con este justiprecio el Comandante de Santa Cruz saco al pregon los referidos cuatro sitios, pr. el termino de treinta dias consecutivos en solicitud de postores. No resultó ninguno, y en seguida recibió una informacion juridica
89 de tres testigos qe. declaron tener suficientes bienes D. Manuel Bustillo pa. mantener poblado el terreno: en este estado remitio el espediente á la Yntenda. la que por decreto de 11 de diciembre de 1821, lo paso á la vista de su promotor fiscal, cuya respuesta es la que sigue:

Sor. Yntendente Interino: El promotor fiscal de esta Yntendencia ha visto con detenida atencion este espediente de tierras mensuradas á favor de Don Manuel Bustillo, vecino del Presidio de Santa Cruz, por el comisionado D. Simon Elias Gonsalez, capitan y comandante de dicho puesto, en el paraje nombrado San Rafael de la Sanja, en aquella misma jurisdiccion, de la qe. resultaron cuatro sitios pa. cria de ganado mayor y caballada, los que fueron valuados por los peritos q. al efecto se nombraron, á razon de sesenta pesos tres de ellos por tener agua corriente, y el cuarto por carecer de esta, y solo ser beneficiado por noria en treinta ps. cuyas dos sumas hasen la de doscientos diez pesos, y habiendolos sacado al pregon por treinta dias consecutivos, no resultó postor alguno q. mejorase dho. abaluo. En seguida se procedio á recibir las tres informa-
90 ciones de estilo, las qe. acreditan tener el interezado Bustillo, suficientes proporciones pa. mantener poblado y amparado el terreno: en tal virtud, pide el que responde se sirva V. si lo tuviere á bien, mandar celebrar las trea publicas almonedas en esta capital, convocando postores y rematandose el terreno en el mayor y mas aventajado qe. resulte, haciendolo entender, debe enterar en esta tesoreria nacional el total valor de

las tierras, su media annata, 18 °p$_o$ de su conduccion, 2 por ciento mandado exigir por puesto gral. y los tres p. correspondientes á los oficiales de la ecstinguida contaduria de Esto., ecspidiendosele la necesaria certificacion q. q. acredite dho. entero, la q. deberiá unirse á este ecspediente y dara cuenta con el á la Junta Superior de hacienda pa. la resolucion qe. tenga á bien tomar; ó no obstante de este mi parecer subordinado al de V., puede determinar lo q. le paresca mejor. Arispe, diciembre 20 de 1821. Francisco Perez.

Y habiendose corformado la Yntendencia con el preinserto pedimento del promotor fiscal se procedió á la celebracion de la primera almoneda el dia 8 de enero d. 1822, en la cual compareció D. Ramon Romero por si y á nombre de los vecinos del

91 Sello cuarto un cuartillo. [SEAL.] Años de 1825 y 1826.

del Presidio de Santa Cruz, haciendo la postura de diez ps. sobre el justiprecio del terreno, é inmediatamente le fue mejorado por D. Manuel Bustillo, con cuyo motivo se fueron mejorando alternativamente las pujas uno á otro de dhos. postores, hta. acender la ultima á la cantidad de un mil y dos cientos ps. hecha por D. Ramon Romero. Publicadas las dos restantes almonedas en los dias 9 y 10 del citado mes, no ocurrió ningun otro mejor postor, quedando solemnemente rematados los espresados cuatro sitios de tierra, comprendidos en el puesto de San Rafael de la Sanja, á favor del mencionado D. Ramon Romero y vecinos de Santa Cruz. En acto continuo se corrió traslado de ecspediente al primero: contestó pr. escrito estar conforme con todo lo actuado: qe. se le admitiese á composicion con la hacienda nacional, y qe. se le librare el correspondte. titulo de merced y confirmacion. En tal virtud se proveyo el auto en vista del tenor siguiente:

Auto en vista. En la ciudad de Arispe á los once dias del mes de enero de mil ochocientos veinte y dos: El Sor. Yntendente Interino de esta provincia de Sonora y Sinaloa, D. Ygno. Bustamante, habiendo
92 visto esta diligencias de medidas, aprecio, pregones, almonedas y remate de los cuatro sitios de tierra realenga para cria de ganado mayor, qe. comprende el paraje nombrado San Rafael de la Sanja, sito en jurisdiccion del Presidio de Sta. Cruz, rematados á favor de D. Ramon Romero, y demas vecinos del mismo puesto militar. La respuesta dada pr. el propio Romero en su antecedente escrito, con todo lo demas qe. consta y ver convino, dijo: Que declarando como declara pr. bastantes, conformes y arregladas en todo las indicadas diligencias; y admitiendo, como desde luego admite á composicion con la Hacienda Nacional por el espresado terreno á los referidos D. Ramon Romero y vecinos de Santa Cruz; debia mandar y mando se notifique y haga saber el primero, proceda á enterar en la caja publica de esta ciudad la cantidad de mil doscientos noventa y siete ps. seis r. cinco granos en esta forma: mil y doscientos pesos en q. por esta Yntenda. se les remataron dhas. tierras: setenta pesos seis r. cinco granos pr. el dro. de media annata, y su diez y ocho pr. ciento: veinte y cuatro ps. respectivos al dos pr. ciento mandado exigir pr. punto general, y los tres ps. restantes pr. dros. de la contaduria ecstinguida del mismo ramo: y realviado qe. sea tal entero, poniendose la correspondiente certificacion q. lo acredite en este ecspe-
93 diente se dara cuenta con el mismo á la Junta Superior de hacienda

pa. su aprovacion á la resolucion qe. convenga. Y pr. este auto en vista asi lo determinó, mandó y firmó con testigos de asistencia á falta de escribano. Ygno. de Bustamante. Assa., Jose Ma. Mendoza; assa., Joaqn. Elias Gonsalez.

Notificada que fue esta providencia al enunciado Romero, y visto y aprovado el ecspediente en junta provincial de la cestinguida Yntendencia de Sonora y Sinaloa en 11 del referido enero, procedió inmediatamente el interesado á verificar el entero en la caja nacional de Arispe, cuyos Ministros le ecspidieron la certificacion que á la letra se copia. Los Mtros. principales de la tesoreria nacional de Arispe y su provincia, certificamos qe. al folio 3 del libro manual del actual año, sentamos la partida siguiente:

Enero 11. Son cargo ≠ un mil doscientos noventa y siete pesos seis r. cinco granos, enterados por D. Ramon Romero pr. si y pr. los demas vecinos del Precidio de Sta. Cruz en esta forma: 1,200 ps. por el pral. valor en que se le han rematado por esta Yntenda. cuatro sitios de tierra 94 realenga pa. cria de ganado mayor qe. comprende el paraje nombrado San Rafael de la Sanja, sito en jurisdiccion del nominado presidio; 70 ps., 6rs., 5 granos por dro. de media annata y su 18 "p$_o$ de conduccion á Espana. 24 ps. respectivos al dos "p$_o$ mandado exigir por punto gral.; y los tres pesos restantes por dros. de la contaduria estinguida del citado ramo, segun esplica el oficio de la Yntendencia qe. señala el No. 1..... $1,297,6,9.

Media annata de tierras.

Escalante, Fuente, Ramon Romero.

Y para q. conste donde convenga damos la precente. Arispe, once de enero de mil ochocientos veinte y dos. Tomas de Escalante, Miguel Ma. de la Fuente.

Agregada la preinserta certificacion al espediente de la materia, queda custodiado este en la comisaria general de mi cargo para perpetua constancia, librandose el conveniente titulo á las partes, por hallarse cestinguida la Junta Superior que fue de hacienda en Mejico.

Por tanto usando de las facultades que

Sello cuarto un cuartillo [SEAL.] Años de 1825 y 1826.

95 espresa el preinserto articulo 81 de la ordenanza de yntendentes, y conforme á lo dispuesto por la instruccion de 15 de octubre de 1794, en todo lo que no se oponga al actual sistema; por el presente á nombre de la nacion soberana de la Republica Mejicana, Q. D. G., confiero merced y confirmacion de los cuatro sitios de tierra pa. cria de ganado mayor, que comprende el puesto nombrado San Rafael de la Sanja, sito en jurisdiccion del precidio de Santa Cruz, á D. Ramon Romero y demas vecinos interesados del propio punto militar, concediendoles y adjudicandoles dho. terreno pr. via de renta, con las calidades qe. previenen las leyes, pa. si, sus hijis, herederos y succesores, con todas sus entradas, salidas, usos, costumbres, servidumbres, maderas, montes, pastos, aguas, aguajes, abrevaderos y demas qe. les correspondan: con la presisa calidad y terminante condicion, de qe. hayan de amparar y poblar dichas tierras sin qe. se verifique estar despoblados ni desamparados por tiempo alguno,

bajo el apercevimiento de q. si se verificare su total abandono por espacio de un año completo, y hubiere persona qe. lo denunciare en tal evento, con previa calificacion del hecho, se adjudicaran en el mejor postor que resultare, esceptuando como es justo, aquellos casos en que el desamparo sea por causa de las invasiones del enemigo Apache ques. hostiliza
96 la frontera: previniendo igualmente á los referidos Don Ramon Romero y vecinos de Santa Cruz, qe. habian de limitarce bajo sus respectivos terminos y linderos, los cuales deberan señalarse con mojoneras de cal y canto. Y los Sres. alcaldes y jueces qe. al presente son, y en adelante fueren, del presidio de Sta. Cruz, y partido de Arispe, en obsequio de la buena administracion de justicia, y en cumplimiento de las leyes de la materia, no permitiran qe. los mencionados interesados, ni sus sucesores, sean perturbados en manera alguna, en el libre uso, ejercicio, propiedad, dominio y posecion de los citados cuatro sitios de tierra comprendidos en el puesto nombrado San Rafael de la Sanja; antes si, celaran y cuidaran con la mayor actividad, que sean amparados y mantenidos siempre en quieta y pacifica posecion de dhas. tierras. En cuyos terminos libro el presente titulo de merced y confirmacion en forma á favor de los referidos Don Ramon Romero y parsioneros, sus hijos, herederos y succesores, entregandoseles pa. su resguardo con previa toma de razon en el cuaderno que corresponde. Dado en la villa del Fuerte á quince de mayo de mil ochocientos veinte y cinco; autorizado y firmado por mi, sellado con el sello de esta contaduria gral., y refrendado por el infrascripto secretario provincial de la misma. Entre renglones: Tomas Gauna pa. apuntador; enmendado; espresado; 1821; provincial;
97 por hallarce; todo vale.

JUAN MIGUEL RIESGO.
[SEAL.] JOSE MARIA MENDOSA,
Srio. Provisional.

Queda tomada razon de este titulo en la foja 3 del cuaderno No. 2 q. eceiste en esta comisaria gral.

(Endorsed:) 2. Original title paper of rancho of San Rafael de la Sanja.

98 (Indorsed:) Case No. 2. F. No. 5. Copy of titulo. Spanish. Filed Jan. 26, 1894. James H. Reeder, clerk. By R. L. Long, dep. Clerk's copy. For trans. E. 2.

99 EXH. F. 3.

This indenture, made the 24th day of March, A. D. 1881, by and between Innocencio Romero, of Los Angeles County, California, of the first part, and Alfred A. Greene, of Tucson, Arizona, of the second part, witnesseth: That whereas heretofore, on the 13th day of April, A. D. 1880, said party of the first part made, executed, and delivered to the party of the second part a deed to certain property therein described, said property being all of the interest of said party of the first part in and to a certain Mexican grant or concession of land, situate mostly in the county of Pima, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, known as the Rancho San Rafael de la Zanja, recorded in Book No. 3, transcribed records, from page 65 to page 76, in the recorder's office in Tucson, Pima County, Territory of

Arizona, to which record reference is hereby made for a more detailed description of said land; and whereas on the same day the party of the second part executed to the party of the first part a certain bond under his hand and seal, providing for the performance of certain conditions therein expressed, in consideration of said above-mentioned deed: Now, therefore, it is agreed by the parties of the first part, for and in consideration of the sum of five hundred dollars ($500.00) to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, that said party of the first part does hereby waive and release unto the party of the second part any and all advantages or benefits that otherwise might result or accrue to him, the party of the first part, by virtue of the above-mentioned bond, the same as if it had never been executed, and also hereby ratifying and confirming unto him, the said party of the second part, the deed above mentioned with the interests therein conveyed, hereby declaring said deed to be and remain in full force and effect in law. It is also agreed and understood that said deed, in connection with this instrument, in consideration of the payment of the five hundred dollars ($500.00) aforesaid, shall and do convey in fee to said party of the second part, his heirs and assigns forever, the above-described property.

In witness whereof said party of the first part hereunto affixes his hand and seal the day and date first above written.

YNOCENCIO ROMERO,
FELICITA AGUILAR DE ROMERO.

Signed, sealed, and delivered by the above-named Inocencia Romero and Felicita Aguilar de Romero, his wife, in presence of the undersigned Ramon Dominquez. The signatures of Inocencia Romero and Felicita Aguilar de Romero, his wife, above written, were written by the subscribing witness hereto at their request respectively, the said Inocencia Romero and Felicita Aguilar de Romero, his wife, being unable to write.

RAMON DOMINQUEZ.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 24th day of March, A. D. 1881, before me, G. A. Dobinson, a commissioner of deeds for the Territory of Arizona, duly appointed, commissioned, and sworn, and residing in the said county of Los Angeles, personally appeared Inocencio Romero and Felicita Aguilar de Romero, whose names are subscribed to the within instrument as parties thereto, known to me to be the persons described in and who executed the said within instrument as parties thereof, and they severally duly acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and the said Felicita Aguilar de Romero, wife of the said Inocencio Romero, having been by me informed of the contents of said instrument, was by me examined separate and apart from and out of the hearing of her said husband; and she
100 thereupon acknowledged that she executed said instrument freely and voluntarily, for the uses and purposes therein mentioned, and declared that she did not wish to retract her execution of the same, and that she and her said husband had consented to each other the execution of the said within written instrument. And the said Inocencio

Romero also further acknowledged before me that he and his said wife, Felicita Aguilar de Romero, had consented to each other the execution of the said within written instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] G. A. DOBINSON,
Commissioner of Deeds for the Territory of Arizona.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of Alfred A. Green, Mch. 29th, A. D. 1881, at 5 p. m., Book 10 Deeds R. E., pages 206, 207, and 208. Charles R. Drake, county recorder.

Filed in the office of the Clerk, Court of Private Land Claims, March 18, 1895. James H. Reeder, clerk, by R. L. Long, deputy.

(Endorsed:) Exhibit (Land Court) F. 3.

NOTE.—The following appears on this deed: Note by A. A. Greene. When this deed was received through Wells & Fargo, attorneys Hayne & Moye Wicks thought it better to return for the parties signing to put on their mark again, but as they had once put it on and the notary public thus certifies, I did not deem it necessary to send it back, for neither the notary or any other party could invalidate it by putting a cross over their mark. Alfred A. Greene. There is another deed from Inocencio Romero to Alfred A. Greene.

101 EXH. F. 4.

This indenture, made the 18th day of March, A. D. 1881, by and between Simon Ortega and his sister, Teresa Ortega de Montigo, of Los Angeles County, State of California, of the first part, and Alfred A. Greene, of Tucson, Arizona, of the second part:

Witnesseth, That whereas heretofore to wit, on the 13th day of April, A. D. 1880, said parties of the first part made, executed, and delivered to the party of the second part a deed to a certain property therein described, and which deed appears of record in the recorder's office at Tucson, Pima County, Arizona Territory, in book 5 of deeds, pages 783 and 788, to which record reference is hereby made for a complete description of the property conveyed therein; and whereas on the same day the party of the second part executed to the party of the first part a certain bond under his hand and seal, providing for the performance of certain conditions therein expressed in consideration of said above-mentioned deed;

Now, therefore, it is agreed by the parties of first part that for and in consideration of the sum of five hundred dollars ($500.00) to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, that said parties of the first part do hereby waive and release unto the party of the second part any and all advantages or benefits that otherwise might result or accrue unto them, the parties of the first part, under and by virtue of the said above-mentioned bond, the same as if it had never been executed, and also thereby ratifying and confirming unto him, said party of the second part, the deed above mentioned, with the benefits and interests therein conveyed, hereby declaring said deed to be and remain in full force and effect in law.

Also, for more accurate mention of the property conveyed by said deed, and to describe the same so that no mistakes may arise as to the intention of the parties hereto, it is also agree' and understood that said deed, in connection with this instrument, in consideration of the payment of the five hundred dollars ($500.00) aforesaid, shall convey in fee to said party of the second part, his heirs and assigns, forever, all the right, title, and interest in and to a certain Mexican grant or concession of land situated partly and mostly in the county of Pima and Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, known as the Rancho San Rafael de la Sanga, recorded in book No. 3 of transcribed records, from page 65 to page 76, in the recorder's office in Tucson, county of Pima, Territory of Arizona, to which record for a more particular description reference is hereby made.

In testimony whereof said parties of the first part hereto affix their hands and seals the day and date above first written.

Signed, sealed, and delivered in presence of G. A. Dobinson.

SIMON ORTEGA.	[SEAL.]
TERESA ORTEGA DE MONTIJO.	[SEAL.]
CRISTOBAL ORTEGA.	[SEAL.]
SANTIAGO MONTIJO.	[SEAL.]
ROSA ROMO DE ORTEGA.	[SEAL.]

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 26th day of March, A. D. 1881, before me, G. A. Dobinson, a commissioner of deeds for the Territory of Arizona, duly appointed, commissioned, and sworn, and residing in the said county of Los Angeles, personally appeared Simon Ortega, Teresa Ortega de Montijo, Cristobal Ortega, Santiago Montijo, and Rosa Romo de Ortega, whose names are subscribed to the annexed instrument as parties thereto, known to me to be the persons described in and who executed the said annexed instrument as parties thereto, and who duly acknowledged to me that
102 they severally executed the same freely and voluntarily and for the uses and purposes therein mentioned. And the said Simon Ortega and Santiago Mintijo, respectively, further acknowledge that they executed the said instrument with the full knowledge and consent of their respective wives, the said Rosa Romo de Ortega and Teresa Ortega de Montijo. And the said Rosa Romo de Ortega, wife of the said Simon Ortega, and the said Teresa Ortega de Montijo, wife of said Santiago Montijo, having been by me informed of the contents of the said instrument, were each by me examined separate and apart from and out of the hearing of their said respective husbands; and they, the said Rosa Romo de Ortega and Teresa Ortega de Montijo, thereupon acknowledged that they executed the said instrument freely and voluntarily for the uses and purposes therein mentioned, and declared that they did not wish to retract their several executions of the same, and also that instrument was executed by their said respective husbands aforesaid with the full knowledge and consent of them, the said Rosa Romo de Ortega and Teresa Ortega de Montijo.

In witness whereof I have hereunto set my hand and affixed my

official seal at my office in the county of Los Angeles aforesaid, the day and year in this certificate first above written.

[SEAL.] G. A. DOBINSON,
Commissioner of Deeds for the Territory of Arizona.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at the request of Alfred A. Greene, Mch. 29th, A. D. 1881, at 5 p. m. Book 10 deeds, R. E., pages 204, 205, and 206. Chas. R. Drake, county recorder.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, March 18, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy. Exhibit (Land Court). F. 4.

103 EXH. F. 5.

This indenture, made the 13th day of April in the year of our Lord one thousand eight hundred and eighty, between Simon Ortega and his sister Tereso Ortega de Montijo, both the only heirs at law of Juana Romero, a daughter and heir of her father, Ramon Romero, of Los Angeles County, State of California, the party of the first part, and Alfred A. Greene, of the said county and State (at present), the parties of the second part, witnesseth that the said parties of the first part, for considerations hereinafter mentioned, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to his heirs and assigns forever, all their right, title, and interest in and to a certain rancho or tract of land situated in Pima County, Territory of Arizona, and located about six (6) miles east of the town of Pueblo, of Santa Cruz, in the State of Sonora, Republic of Mexico, said tract of land being known as San Rafael de la Zanja, and by purchase from the Mexican Government acquired by Ramon Romero, the father of the parties of the first part, thence legally descending to the parties of the first part and other heirs. For a fuller description of the property hereby conveyed, reference is made to the grant or sale now on record in the town of Tucson, Arizona, and Hermilillo, State of Sonora, Mexico, a strip about (1800) eighteen hundred yards in width of the above lands extends onto the Mexican side of the line. The considerations hereinbefore stated consist of fifty dollars in lawful money of the United States of America, the receipt of which is hereby acknowledged, and a bond to convey within one year from date a good and sufficient deed for one league of public land situated in the State of Sonora, Republic of Mexico, or an interest equivalent to a league of land situated in some other grant in the same State and Republic.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and

singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever. And the said parties of the first part and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SIMON ORTEGA,
TERESA ORTEGA DE MONTIJO.

Signed, sealed, and delivered in the presence of—
JAMES A. FISHER,
A. KOHLER.

STATE OF CALIFORNIA,
Said county of Los Angeles.

On this thirteenth day of April, A. D. one thousand eight hundred and eighty, before me, James A. Fisher, a justice of the peace in and
104 for Los Angles Township, County of Los Angeles, personally appeared Simon Ortega and Tereso Ortega de Montijo, known to me to be the same persons whose names are subscribed to the annexed instrument, a deed for certain described land in the State of Sonora, Mexico, and Arizona, and they duly acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my private seal (having no seal of office) at my office in the said county of Los Angeles the day and year in this certificate first above written.

JAMES A. FISHER,
Justice of the Peace.

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

I, A. W. Potts, county clerk and ex-officio clerk of the superior court in and for said county, hereby certify that James A. Fisher, before whom the annexed instrument was made and executed, and who has thereunto subscribed his name, was at the time of so doing a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine. I further certify that the said instrument is made and executed in accordance with the laws of the State of California.

In witness whereof I have hereunto signed my name and affixed the seal of the superior court of said county this 14 day of April, 1880.

A. W. POTTS, *Clerk.*
[SEAL.] By D. M. ADAMS, *Deputy.*

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of A. A. Greene, April 19, A. D. 1880, at 8 a. m., in book 5, deeds R. E., page 783 and 788. S. W. Carpenter, county recorder.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, March 18, 1895, Jas. H. Reeder, clerk, by R. L. Long, deputy. Exhibit (Land Court) F. 5.

105 EXH. F. 6.

This indenture made the 13th day of April, in the year of our Lord one thousand eight hundred and eighty, between Inocencio Romero, of Los Angeles County, State of California, the party of the first part, and Alfred A. Greene, of the same county and State (at present), the party of the second part, witnesseth: That the said party of the first part, for considerations hereinafter mentioned to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to a certain ranch or tract of land situated in Pima County, Territory of Arizona, and located about six (6) miles east of the town or pueblo of Santa Cruz, in the State of Sonora, Republic of Mexico, said tract of land being known as San Rafael de la Zanja, and by purchase from the Mexican Government acquired by Ramon Romero, the father of the party of the first part, thence legally descending to the party of the first part and other heirs.

For a fuller description of the property hereby conveyed, reference is made to the grant or sale now on record in the town of Tucson, Arizona, and Hermosillo, State of Sonora, Mexico. A strip of about 1,800 yards in width of the above land extends onto the Mexican side of the line. The considerations hereinbefore stated consist of fifty dollars in lawful money of the United States, the receipt of which is hereby acknowledged, and a bond to convey within one year from date a good and sufficient deed for one league of public land situate in the State of Sonora, Republic of Mexico, or an interest equivalent to a league of land situate in some other grant in the same State and Republic.

Together with all and singular the tenements, hereditaments, and appurtenance thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, and his heirs, to said premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof said party of the first part has hereunto set his hand and seal the day and year first above written.

INOCENCIO his x mark. ROMERO. [SEAL.]

Signed, sealed, and delivered in presence of—

JAMES A. FISHER.

A. KOHLER.

STATE OF CALIFORNIA,
Said county of Los Angeles, ss.:

On this thirteenth day of April, A. D. one thousand eight hundred and eighty, before me, James A. Fisher, a justice of the peace in and for Los Angeles Township, county of Los Angeles, personally appeared Innocencio Romero, known to me to be the same person whose name is subscribed to the annexed instrument, a deed for certain described
106 land, State of Sonora, Mexico, and in the Territory of Arizona, and he duly acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my private seal (having no seal of office) at my office in the city of Los Angeles, county of Los Angeles, the day and year in this certificate first above written.

JAMES A. FISHER,
Justice of the Peace.

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

I, A. W. Potts, county clerk and exofficio clerk of the superior court in and for said county, hereby certify that James A. Fisher, before whom the annexed instrument was made and executed, and who has thereunto subscribed his name, was at the time of so doing a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine. I further certify that the said instrument is made and executed in accordance with the laws of the State of California.

In witness whereof I have hereunto signed my name and affixed the seal of the superior court of said county this 14th day of April, 1880.

A. W. POTTS, *Clerk.*
By D. M. ADAMS, *Deputy.*

Recorder's office, Tucson, Pima County, A. T. Filed and recorded at request of A. A. Greene, April 19, A. D. 1880, at 8 a. m., in Book 5, Deeds R. E., pages 788 and 794. S. W. Carperter, county recorder.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, March 18, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy. Exhibit (Land Court) F, 6.

107 EXHIBIT F. 7.

This indenture, made the 16th day of March, A. D. 1881, by and between Dolores Romero, of the county of San Bernardino, State of Cal'fornia, of the first part, and Alfred A. Greene, of Pima County, Territory of Arizona, of the second part, witnesseth: That whereas heretofore on the 16th day of April, A. D. 1880, said party of the first part made, executed, and delivered to the party of the second part a deed to certain property therein described, said property being all of the interest of said party of the first part in and to a certain Mexican grant or concession of land situate mostly in the county of Pima, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, known as the Rancho San Rafael de la Zanja, recorded in book No. 3, Transcribed Records, from page 65 to page 76, in the recorder's office in Tucson, Pima County, Territory of Arizona, to which record reference is hereby

made for a more detailed description of said land; and whereas, on the same day the party of the second part executed to the first part a certain bond under his hand and seal providing for the performance of certain conditions therein expressed in consideration of said above-mentioned deed: Now, therefore, it is agree' by the party of the first part, for and in consideration of the sum of five hundred dollars ($500.00) to her in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, that the said party of the first part does hereby waive and release unto the party of the second part any and all advantages or benefits that otherwise might result or accrue to him, the party of the first part, by virtue of the above-mentioned bond, the same as if it had never been executed, and also hereby ratifying and confirming unto him, the said party of the second part, the deed above mentioned, with the interests therein conveyed, hereby declaring said de'd to be and remain in full force and effect in law. It is also agreed and under-stood that said deed in connection with this instrument, in consideration of the payment of the five hundred dollars ($500.00) aforesaid, shall and do convey in fee to said party of the second part, his heirs and assigns forever, the above-described property.

In witness whereof said party of the first part hereto affixes her hand and seal the day and date above written.

(mark)
DOLORES X ROMERO. [SEAL.]

Signed, sealed, and delivered in presence of—
THOS. C. WARDEN.
(mark)
DEMECIO X GRACIA.

The name of Dolores Romero as signature to the above instrument was written by me at her request, and at her request I witness the same, she being unable to write.

THOMAS C. WORDEN, *Witness.*

STATE OF CALIFORNIA,
County of San Bernardino, ss:

On this sixteenth day of March, A. D. one thousand eight hundred and eighty-one, personally appeared before me A. F. McKenney, county clerk and ex officio clerk of the superior court in and for the said San Bernardino County, Dolores Romero, whose name is subscribed to the annexed instrument as part thereto, personally known to me to be the same person described in and who executed the said annexed instrument as party thereto, who acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. F. McKENNEY, *Clerk.*

(*Clerk.*)

108 STATE OF CALIFORNIA,
County of San Bernardino, ss:

On this 29th day of March, A. D. 1881, before me, H. C. Rolfe, judge of the superior court of said county of San Bernardino, State of California, the same being a court of record, personally appeared Dolores

Romero, whose name is subscribed to the annexed and foregoing instrument as a party thereto, known to me to be the person described in and who executed said instrument as a party thereto, and who duly acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the official seal of said court the day and year in this certificate first above written.

[SEAL.]

H. C. ROLFE,
Judge Superior Court.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of A. A. Greene, April 1, A. D. 1881, at 11.30 a. m., book 10, Deeds R. E., pages 214, 215, and 216. Chas. R. Drake, county recorder.

(Endorsed:) Filed in the office of the clerk Court of Private Land Claims March 18, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy. Exhibit (land court) F. 7.

109 EXHIBIT F 8.

This indenture, made the 17th day of September, in the year of our Lord one thousand eight hundred and eighty-one, between Pedro Romero and Francisco Romero, party of the first part, and Alfred A. Green, party of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all our right, title, and interest as heirs of Ramon Romero of, in, and to a certain rancho, or Mexican grant, situated mostly in the county of Pima, Territory of Arizona, but partly in the State of Sonora, Mexico, and known as the San Rafael de la Sanja, said grant being recorded in the recorder's office of said Pima County in book No. 3, transcribed records, from pages sixty-five to seventy-six, and for a more particular description of which grant reference is hereby made to said record. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

his
PEDRO x ROMERO. [SEAL.]
mark

his
FRANCISCO x ROMERO. [SEAL.]
mark

Signed, sealed, and delivered in the presence of—
L. L. ROMERO.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 17th day of September, 1881, personally appeared before me, a notary public in and for said county, Pedro Romero and Francisco Romero, known to me to be the persons described in and who executed the foregoing instrument, and who each and individually acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

[SEAL.] G. W. SPAULDING, *Notary Public.*

Filed and recorded at request of Alfred A. Green, Oct. 4th, A. D. 1881, at 3 p. m. Chas. R. Drake, county recorder. By Anthony Coenen, deputy.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, March 18, 1895. Jas. H. Reeder, clerk. By R. L. Long, deputy. Exhibit (land court) F. 8.

110 EXHIBIT F 9.

This indenture, made the sixteenth day of April, in the year of our Lord one thousand eight hundred and eighty, between Dolores Romero, of the county of San Bernardino, in the State of California, the party of the first part, and Alfred A. Greene, of Tucson, A. T., the party of the second part, witnesseth, that the said party of the first part for considerations hereinafter mentioned, to him in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest, in and to a certain ranch or tract of land, situated in Pima County, Territory of Arizona, and located about six (6) miles east of the town or pueblo of Santa Cruz, in the State of Sonora, Republic of Mexico, said tract of land being known as "San Rafael de la Sanja," and by purchase from the Mexican Government, acquired by Ramon Romero, the father of the party of the first part, thence legally descended to the party of the first part and other heirs.

For a fuller description of the property hereby conveyed, reference is made to the grant or sale now on record in the town of Tucson, Arizona and Hermosillo, State of Sonora, Mexico, a strip of land about 1,800 yards in width of the above lands extends on to the Mexican side of the line. The considerations hereinbefore stated consist of fifty dollars in lawful money of the United States, the receipt of which is hereby acknowledged, and a bond to convey within one year from date, a good and sufficient deed for one league of public lands situate in the State of Sonora, Republic of Mexico, or an interest equivalent to a league of land situate in some other grant in the same State and Republic.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of

the first part and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

her
DOLORES x ROMERO.
mark.

Signed, sealed, and delivered in the presence of—
JOHN T. KNOX,
M. F. THOMAS,
E. H. THOMS.

STATE OF CALIFORNIA,
County of San Bernardino, ss:

On this sixteenth day of April, one thousand eight hundred and eighty, before me, John T. Knox, a justice of the peace, in and for the county of San Bernardino, personally appeared Dolores Romero, known to me to be the person described in, whose name is subscribed to and who executed the within instrument and she duly acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand at my office, in the county of San Bernardino, the day and year in this certificate first above written.

JOHN T. KNOX,
Justice of the Peace.

111 STATE OF CALIFORNIA,
County of San Bernardino, ss:

I, A. F. McKenney, county clerk and exofficio clerk of the superior court, in and for said county (which is a court of record having a seal), do hereby certify that John T. Knox, whose name is subscribed to the annexed deed, was at the date of the same a justice of the peace in said county, duly qualified and authorized by law to do like business, and full faith and credit are due to all his official acts as such officer. And I do verily believe the signature thereunto attached to be genuine.

In witness whereof I have hereunto set my hand and affixed the seal of said court at my office, in the county of San Bernardino, this 16th day of April, A. D. 1880.

A. F. MCKENNEY, *Clerk.*
[SEAL.] By S. M. MELL, *Deputy.*

Recorders office, Tucson, Pima Co., A. T. Filed and recorded at request of T. C. Warden, April 19, A. D. 1880, at 8 a. m., in book 6, deeds R. E., pages 779, 80, 1, 2, 3. S. W. Carpenter, county recorder.

(Endorsed:) Filed in the office of the clerk court of private land claims, Mar 18, 1895, Jas. H. Reeder, clerk; by R. L. Long, deputy. Exhibit (land court) F. 9.

112 (Exh. F. 10.)

Terranate, *Febrero 20 de 1880.*

Pedro x Romero.

[seal.]

Franco x Romero.

Los Infrascritos Pedro Romero y Franco Romero, hijos legitimos y herederos de nuestro defunto padre, Ramon Romero, vendemos por esta escritura o documento cedemos y hacemos traspaso al el Americano Alfredo A. Greein todo interes y derecho que puedamos tener en el rancho conocido por "San Rafael de la Sanja" cituado en terrenos de San Rafael siendo los mismos terrenos que constan segun las copias o titulos originales que se hallan archivados en Ures y Tucson, "Arizona," que fueron primero denunciados por Dn. Manuel Bustillo, vajo el mismo nombre de "San Rafael pe la Sanja," y medidos en favor de dicho Manuel Bustillo y despues puestos en remate publico por el Gobierno y comprados por nuestro padre Ramon Romero segun y conforme a *a* dichas medidas. Y nosotros Pedro Romero y Francisco Romero vendemos dichos terrenos de "San Rafael de la Sanja" o la accion o derecho que puedamos tener el ellos segun las medidas hechas y todo lo que quede dentro de dicho terreno hasta donde senalen las mohoneras ya establecidas que demarcan los limites de dicho rancho que se pucieron por orden del Gobierno cuando se dieron las medidas y titulo del precitado terreno a tiempo de adjudicacele a nuestro padre Ramon Romero por la almoneda publica en que fue rematado. Por esta venta que hacemos al el Americano Alfredo A. Green tenemos recibido en mano la cantidad de cien persos en plata y dos pagares por la cantidad de trecientos cincuenta persos cada uno, cantidad que reconocemos como suiciente como paga por dicho terreno de "San Rafael de la Sanja." El precitado terreno esta cituado al Oriente del pueblo de Santa Cruz y una peguena parte, en anchura, como de mil ochocientos varas son en el territorio Mejicana y lo demas al otro lado del lindaro en el territorio Americano en el Condado de Pima o Pima County. Esta venta la hemos hecho en el pueblo de Terrenate, Distrito de Magdalena, Estado de Sonora, Republica Mejicana, el dia viente de Febrero de mil ochocientos ochenta, en presencia de dichos testigos por no saber ecribir y firmamos hace despues de haver cido puesto en nuestro conocimineto completo el contenido de este documento for personas fidedignas y de nuestra entera confienza.

Pedro (mark) Romero.
Francisco (mark) Romero.

Testigo:
Eugenio Babichi.
Testigo:
Panteleon Lorta.
Testigo:
A. Barreda

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 27th day of February, 1880, personally appeared before me, G. W. Spaulding, a notary public in and for said county, A. Barreda, a subscribing witness to the foregoing deed, who is personally known to me to be the person whose name is subscribed to said conveyance as witness thereto, and who on oath deposes and says that the two persons who executed the foregoing deed, Pedro Romero and Francisco Romero, are personally known to him to be the persons described in, and who subscribed and executed the foregoing conveyance, and that they and each of them acknowledged that he executed said instrument freely and voluntarily for the uses and purposes therein mentioned, and that affiant is the person whose name is subscribed to instrument as witness thereto, and said Barreda further says that he makes this acknowledgment and affidavit freely and voluntarily for the uses and purposes therein mentioned.

(Signed) A. BARREDA.

113 Subscribed and sworn to and acknowledged before me Feb. 27, 1880. In testimony whereof I have hereunto set my hand and official seal the date above written.

[SEAL.] G. W. SPAULDING,
Notary Public, Pima County.

Filed and recorded at request of G. W. Spaulding, Feby. 27, A. D. 1880 at 11.30 a. m. S. W. Carpenter, county recorder. By B. Heinemann, deputy.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Chas. A. Shibell, county recorder in and for the county of Pima, do hereby certify that the above and foregoing is a full, true, and correct copy of a deed from Pedro Romero and Francisco Romero to Alfredo A. Greein, dated Febrero 20 de 1880, as appears of record now in my office in book No. 6 of deeds, real estate, at pages 430, following.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in Tucson, this 19th day of January, A. D. 1894.

(Signed) CHAS. A. SHIBELL,
[SEAL.] *County Recorder.*

(Endorsed:) Filed Jan. 20, 1894. Jas. H. Reeder, clerk, by R. L. Long, dep. Exhibit (land court) F. 10.

114 In the United States court of private land claims.

UNITED STATES OF AMERICA,
District of Arizona, ss:

Petition filed in the clerk's office this 27th day of February, A. D. 1893.
Alias summons.

ALFRED A. GREEN, plaintiff,
vs.
UNITED STATES OF AMERICA ET AL., defendants.

The President of the United States of America to Antonio de La Osa, Carlton B. Kelton, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Frank Hereford, Albert Steinfeld, G. B. W. Gardner, Nicholas Bersich, Richard Chapin, John Connor, Glis San, Watkins Gittens, William Gittens, William E. Leek, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, James Parker, William Parker, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Elihu P. Vankuren, greeting:

You and each of you are hereby notified that an action has been brought in said court by Alfred A. Green, plaintiff against you as defendants, under the provisions of the act of Congress of the United States entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories, approved Mar. 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action, in said court within thirty days after the service of this summons upon you, and if you fail so to do, the said plaintiff will take default according to the provisions of the afordsaid act.

Witness the honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Tucson, in said district this 7th day of February, 1899, and of the independance of the United States the 122*th* year.

[SEAL.] JAMES H. REEDER,
Clerk.

By R. L. LONG,
Deputy Clerk.

115 The Court of Private Land Claims of the United States.

ALFRED A. GREEN, PLAINTIFF,

vs.

THE UNITED STATES OF AMERICA, R. R. RICHARDSON, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, D. Smith, E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, O. Smith, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy, Ed Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Browa, Ignatius Burgoon, Jesus Bustamente, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, Victor Hugo Igo, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sydney L. Parke, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vankuren, John Doe, James Doe, William Doe, George Doe, Frank Doe, David Doe, Lawrence Doe, Charles Doe, Samuel Doe, Herbert Doe, Arthur Doe, Leo Doe, Henry Doe, Michael Doe, Benjamin Doe, Albert Doe, Julius Doe, Joseph Doe, Alexander Doe, Frederic Doe, Pedro Doe, Jean Doe, Edward Doe, Jerry Doe, Lionel Doe, Thomas Doe, Abraham Doe, Walter Doe, John Roe, James Roe, William Roe, George Roe, Frank Roe, David Roe, Charles Roe, Samuel Roe, Herbert Roe, Harry Roe, Arthur Roe, Henry Roe, Michael Roe, Benjamin Roe, Albert Roe, Julius Roe, Joseph Roe, Alexander Roe, Frederick Roe, Pedro Roe, Leo Roe, Jean Roe, Edward Roe, Jerry Roe, Lionel Roe, Abraham Roe, Thomas Roe, Bryan Roe, Walter Roe (whose real names are to plaintiff unknown), defendants.

To the Honorable Justices of the said Court:

The plaintiff, Alfred A. Green, by this his petition, respectfully shows: That on the 15th day of May, 1825, the State of the West, in the Republic of Mexico, granted and conveyed to Ramon Romero that certain tract of land, now situated in the county of Pima, in the Territory of Arizona, known and designated as the "Rancho San Rafael de la Zanja," particularly bounded and described as follows: Commencing on

the center of the tract at a place called at the time the grant was made "San Rafael," running thence northerly 200 cordels, being two leagues, to an oak tree marked with a cross cut thereon and a stone monument at the tree; thence easterly 200 cordels, being 2 leagues, to the northeasterly corner, marked by a heap of stones; thence southerly 400 cordels, being 4 leagues; thence westerly 400 cordels, being 4 leagues, to the southwesterly corner, being on the Paso de San Antonio, where there are two little hills; thence northerly 400 cordels, being 4 leagues, to a point on the Plomosa Mountain; thence easterly 200 cordels, being 2 leagues, to the place of beginning.

116 That the plaintiff by mesne conveyances has become invested in the title to said grant.

That all of the original documents constituting and creating said grant are in the possession and official custody of the surveyor-general of the United States for the Territory of Arizona, at the city of Tucson, in said Territory, and that none of said documents are in the possession of or under the control of plaintiff.

That as soon as this petition is filed, plaintiff, pursuant to law, will request said surveyor-general to transmit the same to the clerk of this court.

That the said claim set forth in this petition has not heretofore been confirmed, considered, or acted upon by Congress or any authorities of the United States.

That the following-named persons are in the possession of parts of the said rancho, and claim an interest in the lands embraced therein, but not under said grant: E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, and O. Smith.

That the following-named persons claim to have an interest in said rancho under said grant, to wit: R. R. Richardson, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, and D. Smith.

That the map hereto annexed shows the boundaries of said land, and the quantity thereof is sixteen square leagues.

Wherefore plaintiff prays that the validity of such title may be inquired into and decided, and that the title of the plaintiff to said lands be declared valid, and that plaintiff have such other and further relief as may be proper in the premises.

ALFRED A. GREEN,
Petitioner.

GRAIG & MEREDITH,
Counsel for Petitioner.

CERTIFICATE.

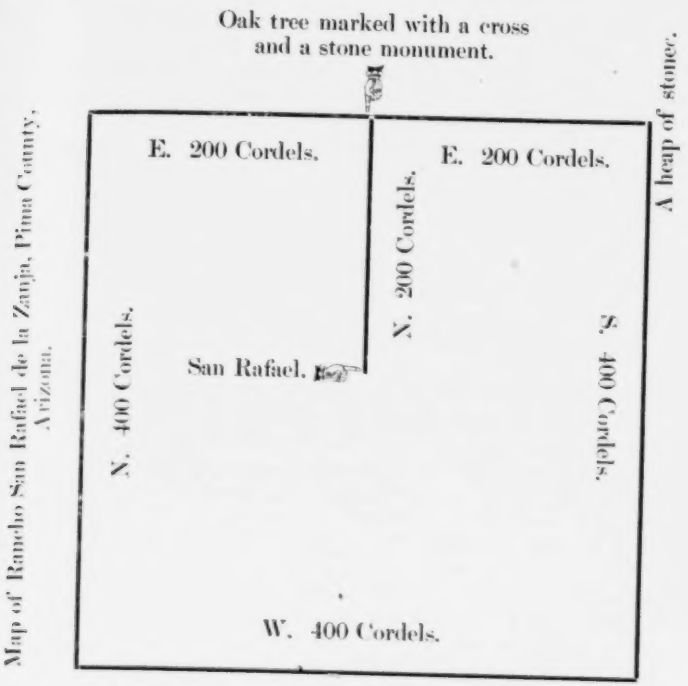
U. S. COURT OF PRIVATE LAND CLAIMS,
District of Arizona, ss:

I hereby certify that the paper attached hereto is a full, true, and correct copy of the paper of which it purports to be a transcript, on file in my office, as amended by the addition of certain defendants in accordance with the order of this court.

Given under my hand and the seal of said court, at Tucson, this 7th day of February, 1899.

[SEAL.]

JAMES H. REEDER, *Clerk,*
By R. L. LONG, *Deputy Clerk.*


Oak tree marked with a cross
and a stone monument.
A heap of stones.
E. 200 Cordels.
E. 200 Cordels.
N. 200 Cordels.
San Rafael.
N. 400 Cordels.
S. 400 Cordels.
W. 400 Cordels.
Map of Rancho San Rafael de la Zanja, Pima County, Arizona.

117 In the Court of Private Land Claims, Arizona district.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, et al., defendants.

Separate answer of Harvey L. Christie.

Comes now Harvey L. Christie, one of the defendants herein, by his counsel, and for separate answer to the petition herein denies that Alfred A. Green, plaintiff, has any right, title, or interest in or to the Rancho San Rafael de la Zanja, for the confirmation of which he prays, or any right, title, or interest in or to any part thereof and defendant denies that said Green is the holder, owner, or possessor of said grant or any part thereof and alleges that before the institution of this suit he had parted with any title to or interest in said grant that he may at any time have possessed.

And further answering defendant avers that he is the owner in fee, holder, and possessor of that certain tract of land lying, being, and situate chiefly in the county of Pima, Territory of Arizona, and partly in the County of Cochise in said Territory, commonly known as and called the San Rafael de la Zanja grant or private land claim, being the

same grants mentioned in the complaint herein and more particularly hereinafter described.

The defendant owns in fee, holds, and possesses such land under and by virtue of a certain instrument of writing now and hereafter designated as and being a grant title bearing date of 15th day of May, 1825, duly made and executed by Juan Miguel Riesgo, commissary-general of the state of the West, in the name of the sovereign nation of the Mexican Republic.

That under and by virtue of the laws and decrees then in force such proceedings were thereunder lawfully and regularly had as that the Mexican Republic, acting by and through its proper and authorized officers, duly and regularly, and for good and valuable consideration, to-wit, the sum of $1,297 6 reals and 5 grains, and for other good and valuable considerations in said grant title set forth and described, on the 10th day of January, 1822, sold and conveyed in fee to one Ramon Romero and other citizens of the presidio of Santa Cruz the lands hereinbefore mentioned and more particularly hereinafter described, known as the San Rafael de la Zanja grant.

That the proceedings resulting in the issuing of the title to the lands embraced in said grant were instituted by a petition dated July 19, 1821, to Brigadier Don Antonio Cordero, governor intendente of Sonora and Sinaloa, who was then the officer in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the jurisdiction of the presidio of Santa Cruz in which jurisdiction the lands thus petitioned for is situated; that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of intendentes of December 4, 1786, which instructions and ordinances defendant avers were continued in force by the Mexican Republic without any change whatever in them, and on January 10, 1822, the tract petitioned for and as surveyed according to the calls of the expediente thereof was sold by the officers of the Mexican Republic to Ramon Romero and other citizens of the presidio of Santa Cruz and grantees thereof for the sum of $1,297 6 reales and 5 grains, which amount was thereupon, on January 11, 1822, paid by said grantees into the national treasury of the Mexican Republic; that the said sale was on last-named date approved by the provisional junta of the national treasury of Arispe and on the same day was referred to the supreme junta of royal hacienda for its approval; that before it could be approved the said supreme junta of royal hacienda was abolished and no further proceedings were taken thereon till May 15, 1825, when Juan Miguel Riesgo, commissary-general of the state of the West, acting for and by authority of and in the name of the sovereign nation of the Mexican Republic, issued to said grantees the final testimonial or evidence of titles of said grant and the same was thereupon duly recorded on folio 3 of book No. 2 of the records of grants or sales of land for said year 1825.

That the original grant title or instrument of writing by which said grant was conveyed to the aforesaid grantees is not in the possession of or under the control of defendant, but is, together with other letters and papers relating to said grant, in the possession and custody of the United States surveyor-general of the Territory of Arizona, at the City of Tucson, and that for this reason the said original document constituting and creating said grant is not herewith presented or delivered, but defendant

forwards herewith as exhibits 2, are parts of this answer certified copies in Spanish of said original titulo and copies of the translation of the same and defendant avers that copies are correct and literal copies of said titulo and that said translations are correct translations of same.

Defendants avers that the map filed herewith, executed by
118 Ygnacio Bonillas, esq., which map is made an exhibit to *are* part of this answer is a correct map of said San Rafael de la Zanja grant or private land claim and defendant avers that he owns in fee, by virtue of said grant title, all of said lands so designated by said map and that the said grant comprises acres as shown by said map.

That under the provisions of the eighth section of the act of Congress, approved July 22, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and other acts amendatory, or in extension thereof, or supplemental thereto, the successors in interest to the original grantees under said grant filed on February 28th, 1880, in the office of the United States surveyor-general for the Territory of Arizona, their petition asking for the confirmation to them of the said San Rafael de la Zanja grant accompanying which petition were the original title papers of said grant; that thereupon the United States surveyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general in his official report, under date of April 28, 1880, to Congress on said grant reported that the original expediente of the same, containing 37 pages, was found in the proper place in the archives of Mexico; that said expediente was written on the corresponding stamped paper, and showed no cause for suspicion and that there was no doubt as to the genuine character of the original title papers. Defendant avers that the reports of said Special Agent Hopkins and said United States surveyor-general fully established the genuine character of the origiaal title papers of said grant, but that no action was taken by Congress or by any authorities of the United States thereon.

That the statements in said reports of said Hopkins and said United States surveyor-general are true and that said grant is, and that at the time of the execution of the treaty known as the Gadsden treaty was, located and duly recorded in the archives of Mexico.

That defendant owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by the original grantees of said grants and their grantees to defendant, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof defendant can furnish to this court if he should be by this court directed so to do.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico and that at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

That the lands claimed by defendant are all the lands embraced within the original surveys of said grant to the boundaries established and described therein and that said lands are the lands embraced within the accompanying map of said grant filed herewith.

Defendant avers that each and every person in possession of any part of said grant is in possession thereof unlawfully and without the permis-

sion of this defendant and that any and all patents or other indicia or muniments of title, if any such there be, issued by the United States to any lands within the limits of said grant were issued in controvention of law and are wholly null and void, so far as the rights of this defendant are concerned, for the reason that said grant is and, at the time of the Gadsden purchase, was a complete and perfect title in fee in the owners thereof; that the United States never had any title to any part of said grant and that none of the said patents or muniments of title, if any such there be, conveyed any title.

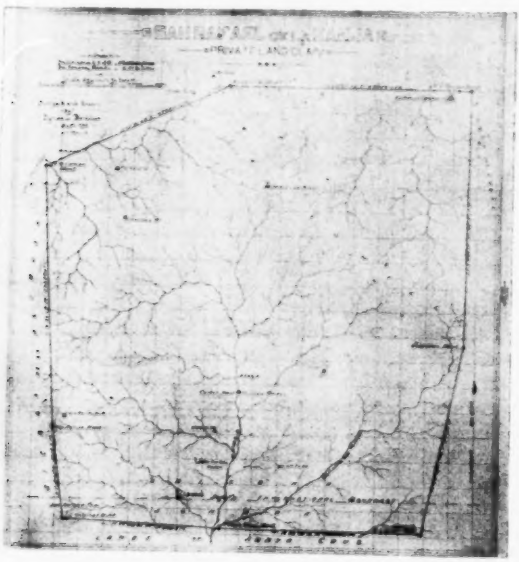
Defendant farther avers that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete, and lawful and vested a perfect and valid title in fee thereto in the grantees of said grant and that said grantees immediately after the survey of the said tract of land as set out in the title papers of said grant went into the actual possession, use, and occupation of the whole of said tract of land, claiming title to the whole of said tract of land to the monuments described therein; that said grantees and their successors in interest have continuously remained in possession of all of said tract of land under such claim of title from the survey of said tract to the present time and were in the open, and exclusive, and peaceable possession of all said tract, claiming title to the whole of same at the time of the treaty between the Republic of Mexico and the United States of America; that said grant documents constituted a complete and definitive grant in fee by way of sale, coupled with the conditions subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed and that this defendant is entitled to a confirmation or recognition of his title to said grant in accordance with the metes and bounds set forth in the original survey and grant of the same; that said grant was not a grant by quantity, but was a sale by the metes and bounds and natural land marks established by the said survey thereof made by the Spanish officials prior to the issuance of same and that it vested in the grantees a perfect and valid title in fee to the whole of said tract so surveyed.

Defendant further avers that prior to said treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by anyone and that none of the grantees or their successors in
119 interest had prior to said treaty any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and defendant further avers that if this honorable court should decide that said sale as recited in said title papers did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefore, he is ready and willing and now offers to pay to the United States of America any

amount that may be found to be due from him for such overplus and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefore is ascertained.

Wherefore, defendant now tenders to the United States of America and offers to deposit with the clerk of this honorable court for the United States of America the sum of thirteen hundred and fifty-nine dollars in gold coin of the United States of America as payment for all such overplus or surplus of said lands in said grant according to their quality and the price which governed when it was surveyed and appraised, and the further sum of two hundred dollars in like gold coin for the costs of ascertaining and determining the existence or nonexistence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender, and as aforesaid offers to pay said amount or any amount which may by this honorable court be adjudged to be due for any such overplus or surplus, and prays that upon said payment this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by the said decree he be secured in the owernership and possession of the whole of said tract, and defendant answering herein, by reason of the fact that he has been made a party defendant, prays that the validity of his said title may be inquired into and decided and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and the defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

FRANCIS J. HENEY,
Attorney for Defendant, Harvey L. Christie.



I hereby certify that served the within writ and a true copy of petition of A. A. Green and separate answer of H. L. Christie upon the following-named persons by delivering to them personally a true copy thereof, to wit: On Feb. 9, 1899, to E. L. Oakes and W. E. Leak, at Harshaw; to John Glissen, What Gittens, and D. Gittens, at Duquesne; to Jerry Nevelle, Fred. Olsen, Geo. W. Crowe, Canon City Smelting Works, and N. H. Chapin, at Washington Camp; to Fran. Samora, at Lochiel; on Feb. 10th, 1899, to N. Bersich, at ranch 9 miles E. from Lochiel; James Parker, 7 miles N. E. from Bersich ranch; Jesse Bland, 5 miles E. of Parkers, and James Rice, 15 miles N. of Lochiel; on Feb. 11th, 1899, on James Bennet, miles N. of Duquesne, and Thomas Rice, at Benson, all within the Territory of Arizona.

Dated at Tucson, Arizona, February 13, 1899.

WM. M. GRIFFITH, *U. S. Marshal.*
By THOS. GRINDELL, *Office Dep'ty.*

I hereby certify that I served the within writ and a true copy of petition of A. A. Green and separate answer of H. L. Christie upon the following-named persons by delivering to them personally a true copy thereof, to wit: Frank H. Hereford (for himself and G. B. W. Gardner), Albert Steinfeld (for himself and S. Silverberg), Frank M. Allison, Warren Allison, W. C. Davis, Herbert Tenney, James Finley, V. H. Igo, R. N. Leatherwood, F. A. Odermatt, W. M. Roberts, E. B. Roberts, E. B. Vankuren, and C. B. Kelton, on the 11th day of February, 1899, and on Antonio de la Osa, Feb. 13th, 1899, all in the city of Tucson, Arizona Territory.

Dated at Tucson, Arizona, February 13th, 1899.

WM. M. GRIFFITH, *U. S. Marshal.*
By J. P. WELLES, *Office Deputy.*

Filed February 13th, 1899. James H. Reeder, clerk, by R. L. Long, deputy.

121 In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of Arizona, ss:

ALFRED A. GREEN, PLAINTIFF,
vs.
UNITED STATES OF AMERICA ET AL., DEFENDANTS.

Petition filed in the clerk's office this 27th day of February, A. D. 1893.
Alias summons.

The President of the United States of America to R. R. Richardson, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, D. Smith, E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, O. Smith, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy, Ed Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustamante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor, Gilis San, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, Victor Hugo Igo, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sydney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vankuren, John Doe, James Doe, William Doe, George Doe, Frank Doe, David Doe, Lawrence Doe, Charles Doe, Samuel Doe, Herbert Doe, Arthur Doe, Leo Doe, Henry Doe, Michael Doe, Benjamin Doe, Albert Doe, Julius Doe, Joseph Doe, Alexander Doe, Frederic Doe, Pedro Doe, Jean Doe, Edward Doe, Jerry Doe, Lionel Doe, Thomas Doe, Abraham Doe, Walter Doe, John Roe, James Roe, William Roe, George Roe, Frank Roe, David Roe, Charles Roe, Samuel Roe, Herbert Roe, Harry Roe, Arthur Roe, Henry Roe, Michael Roe, Benjamin Roe, Albert Roe, Julius Roe, Joseph Roe, Alexander Roe, Frederick Roe, Pedro Roe, Leo Roe, Jean Roe, Edward Roe, Jerry Roe, Lionel Roe, Abraham Roe, Thomas Roe, Bryan Roe, Walter Roe (whose real names are unknown), greeting:

You and each of you are hereby notified that an action has been brought in said court by Alfred A. Green, plaintiff, against you as defendants, under the provisions of the act of Congress of the United States entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories, approved Mar. 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days after the service of this summons upon you, and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the honorable Joseph R. Reed, chief justice of the Court of Private Land Claims and the seal of the said court, at the city of Tucson, in said district this 7th day of March, 1899, and of the Independence of the United States the 122*d* year.

[SEAL.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk*.

122 The Court of Private Land Claims of the United States.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R RICHARDSON, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, D. Smith, E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, O. Smith, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy, Ed Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustamante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, Victor Hugo Igo, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sydney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vankuren, John Doe, James Doe, William Doe, George Doe, Frank Doe, David Doe, Lawrence Doe, Charles Doe, Samuel Doe, Herbert Doe, Arthur Doe, Leo Doe, Henry Doe, Michael Doe, Benjamin Doe, Albert Doe, Julius Doe, Joseph Doe, Alexander Doe, Frederic Doe, Pedro Doe, Jean Doe, Edward Doe, Jerry Doe, Lionel Doe, Thomas Doe, Abraham Doe, Walter Doe, John Roe, James Roe, William Roe, George Roe, Frank Roe, David Roe, Charces Roe, Samuel Roe, Herbert Roe, Harry Roe, Arthur Roe, Henry Roe, Michael Roe, Benjamin Roe, Albert Roe, Julius Roe, Joseph Roe, Alexander Roe, Frederick Roe, Pedro Roe, Leo Roe, Jean Roe, Edward Roe, Jerry Roe, Lionel Roe, Abraham Roe, Thomas Roe, Bryan Roe, Walter Roe (whose real names are to plaintiff unknown), defendants.

To the Honorable Justices of the said Court:

The plaintiff, Alfred A. Green, by this, his petition, respectfully shows: That on the 15th day of May, 1825, the State of the West, in the

Republic of Mexico, granted and conveyed to Ramon Romero that certain tract of land, now situated in the county of Pima, in the Territory of Arizona, known and designated as the "Rancho San Rafael de la Zanja," particularly bounded and described as follows: Commencing on the center of the tract at a place called at the time the grant was made "San Rafael;" running thence northerly 200 cordels, being two leagues, to an oak tree marked with a cross cut thereon, and a stone monument at the tree; thence easterly 200 cordels, being 2 leagues, to the northeasterly corner marked by a heap of stones; thence southerly 400 cordels, being 4 leagues; thence westerly 400 cordels, being 4 leagues, to the southwesterly corner, being on the Paso de San Antonio, where there are two little hills; thence northerly 400 cordels, being 4 leagues, to a point on the Plomosa Mountain; thence easterly 200 cordels, being 2 leagues, to the place of beginning.

123 That the plaintiff, by mesne conveyances, has become invested in the title to said grant.

That all of the original documents constituting and creating said grant are in the possession and official custody of the surveyor-general of the United States for the Territory of Arizona, at the city of Tucson, in said Territory, and that none of said documents are in the possession of or under the control of plaintiff.

That as soon as this petition is filed, plaintiff, pursuant to the law, will request said surveyor-general to transmit the same to the clerk of this court.

That the said claim set forth in this petition has not heretofore been confirmed, considered, or acted upon by Congress or any authorities of the United States.

That the following-named persons are in the possession of parts of the said rancho and claim an interest in the lands embraced therein, but not under said grant: E. Smith, F. Smith, G. Smith, H. Smith, I. Smith, J. Smith, K. Smith, L. Smith, M. Smith, N. Smith, and O. Smith.

That the following named persons claim to have an interest in said rancho under said grant, to wit: R. R. Richardson, Colin Cameron, William C. Jones, A. Smith, B. Smith, C. Smith, and D. Smith.

That the map hereto annexed shows the boundaries of said land, and the quantity thereof is sixteen square leagues.

Wherefore plaintiff prays that the validity of such title may be inquired into and decided, and that the title of the plaintiff to said lands be declared valid, and that plaintiff have such other and further relief as may be proper in the premises.

ALFRED A. GREEN,
Petitioner.

CRAIG & MEREDITH,
Counsel for Petitioner.

CERTIFICATE.

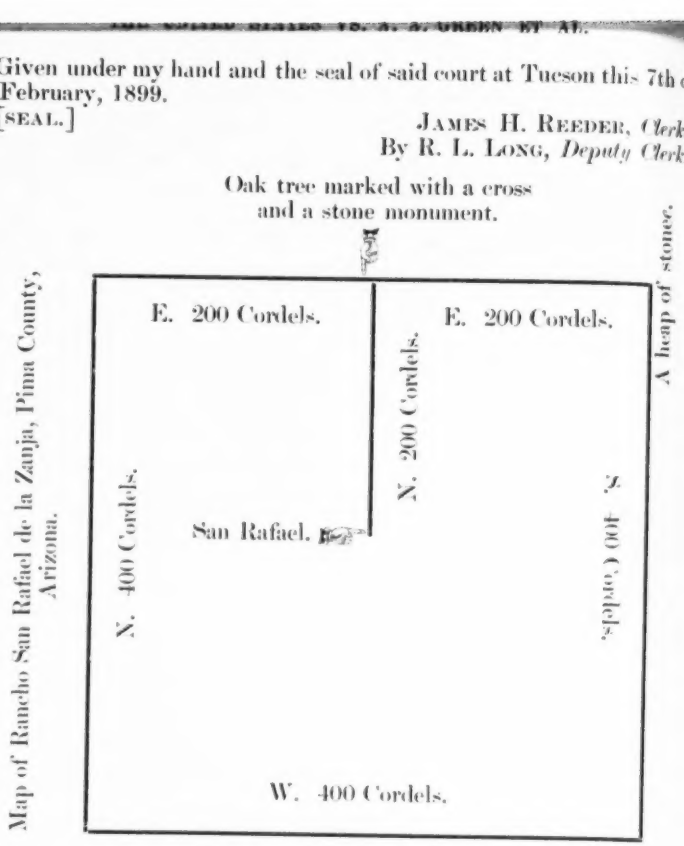
U. S. COURT OF PRIVATE LAND CLAIMS,
District of Arizona, ss.

I hereby certify that the paper attached hereto is a full, true, and correct copy of the paper of which it purports to be a transcript, on file in my office as amended by the addition of certain defendants in accordance with the order of this court.

Given under my hand and the seal of said court at Tucson this 7th day of February, 1899.

[SEAL.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk*.


Oak tree marked with a cross and a stone monument.
A heap of stones.
E. 200 Cordels.
E. 200 Cordels.
N. 200 Cordels.
N. 400 Cordels.
San Rafael.
E. 400 Cordels.
W. 400 Cordels.
Map of Rancho San Rafael de la Zanja, Pima County, Arizona.

124 In the Court of Private Land Claims, Arizona district.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. RICHARDSON, Colin Cameron, et al., defendants.

Separate answer of Harvey L. Christie.

Comes now Harvey L. Christie, one of the defendants herein, by his counsel, and for separate answer to the petition herein denies that Alfred A. Green, plaintiff, has any right, title, or interest in or to the Rancho San Rafael de la Zanja, for the confirmation of which he prays, or any right, title, or interest in or to any part thereof, and defendant denies that said Green is the holder, owner, or possessor of said grant or any part thereof, and alleges that before the institution of this suit he had parted with any title to or interest in said grant that he may at any time have possessed.

And further answering defendant avers that he is the owner in fee-holder, and possessor of that certain tract of land lying, being, and situate chiefly in the county of Pima, Territory of Arizona, and partly in the county of Cochise in said Territory, commonly known as and called the

San Rafael de la Zanja grant or private land claim, being the same grants mentioned in the complaint herein, and more particularly here, inafter described.

The defendant owns in fee, holds and possesses such land under and by virtue of a certain instrument of writing now and hereafter designated as and being a grant title, bearing date of 15th day of May, 1825, duly made and executed by Juan Miguel Riesgo, commissary-general of the State of the West, in the name of the sovereign nation of the Mexican Republic.

That under and by virtue of the laws and decrees then in force such proceedings were thereunder lawfully and regularly had as that the Mexican Republic, acting by and through its proper and authorized officers, duly and regularly and for good and valuable consideration, to wit, the sum of $1,297, 6 reales and five grains, and for other good and valuable considerations in said grant title set forth and described, on the 10th day of January, 1822, sold and conveyed in fee to one Ramon Romero and other citizens of the Presidio of Santa Cruz the lands hereinbefore mentioned and more particularly hereinafter described, known as the San Rafael de la Zanja grant.

That the proceedings resulting in the issuing of the title to the lands embraced in said grant were instituted by a petition dated July 19, 1821, to Brigadier Don Antonio Cordero, governor intendente of Sonora and Sinaloa, who was then the officer in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the the jurisdiction of the presidio of Santa Cruz, in which jurisdiction the lands thus petitioned for is situated; that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of intendentes of December 4, 1786, which instructions and ordinances defendant avers were continued in force by the Mexican Republic without any change whatever in them, and on January 10, 1822, the tract petitioned for and as surveyed, according to the calls of the expediente thereof, was sold by the officers of the Mexican Republic to Ramon Romero and other citizens of the presidio of Santa Cruz, and grantees thereof, for the sum of $1,297, 6 reales and 5 grains, which amount was thereupon, on January 11, 1822, paid by said grantees into the national treasury of the Mexican Republic; that the said sale was, on last-named date, approved by the provisional junta of the national treasury of Arispe, and on the same day was referred to the supreme junta of royal hacienda for its approval; that before it could be approved the said supreme junta of royal hacienda was abolished, and no further proceedings were taken thereon till May 15, 1825, when Juan Miguel Riesgo, commissary-general of the State of the West, acting for and by authority of and in the name of the sovereign nation of the Mexican Republic, issued to said grantees the final testimonial or evidence of titles of said grant, and the same was thereupon duly recorded on folio 3 of book No. 2, of the records of grants or sales of land for said year 1825.

That the original grant, title, or instrument of writing by which said grant was conveyed to the aforesaid grantees is not in the possession of or under the control of defendant, but is, together with other letters and papers relating to said grant, in the possession and custody of the United States surveyor-general of the Territory of Arizona, at the city of Tucson, and that for this reason the said original document constituting and creating said grant is not herewith presented or delivered, but defendant

forwards herewith, as exhibits 2 are parts of this answer, certified copies in Spanish of said original titulo and copies of the translation of the same, and defendant avers that copies are correct and literal copies of said titulo and that said translations are correct translations of same.

Defendants avers that the map filed herewith, executed by
125 Ygnacio Bonillas, esq., which map is made an exhibit to are part of this answer, is a correct map of said San Rafael de la Zanja grant or private land claim, and defendant avers that he owns in fee, by virtue of said grant title, all of said lands so designated by said map, and that the said grant comprises acres, as shown by said map.

That under the provisions of the eighth section of the act of Congress, approved July 22, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and other acts amendatory or in extension thereof or supplemental thereto, the successors in interest to the original grantees under said grant filed on February 28th, 1880, in the office of the United States surveyor-general for the Territory of Arizona, their petition asking for the confirmation to them of the said San Rafael de la Zanja grant, accompanying which petition were the original title papers of said grant; that thereupon the United States surveyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general in his official report under date of April 28, 1880, to Congress on said grant reported that the original expediete of the same, containing 37 pages, was found in the proper place in the archives of Mexico; that said expediente was written on the corresponding stamped paper and showed no cause for suspicion, and that there was no doubt as to the genuine character of the original title papers. Defendant avers that the reports of said Special Agent Hopkins and said United States surveyor-general fully established the genuine character of the original title papers of said grant, but that no action was taken by Congress or by any authorities of the United States thereon.

That the statements in said reports of said Hopkins and said United States surveyor-general are true, and that said grant is and that at the time of the execution of the treaty known as the Gadsden treaty was located and duly recorded in the archives of Mexico.

That defendant owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by the original grantees of said grants and their grantees to defendant, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof defendant can furnish to this court if he should be by this court directed so to do.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and that at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

That the lands claimed by defendant are all the lands embraced within the original surveys of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant filed herewith.

Defendant avers that each and every person in possession of any part of said grant is in possession thereof unlawfully and without the

permission of this defendant, and that any and all patents or other indicia or muniments of title, if any such there be, issued by the United States to any lands within the limits of said grant were issued in contravention of law and are wholly null and void, so far as the rights of this defendant are concerned, for the reason that said grant is and at the time of the Gadsden purchase was a complete and perfect title in fee in the owners thereof; that the United States never had any title to any part of said grant and that none of the said patents or muniments of title, if any such there be, conveyed any title.

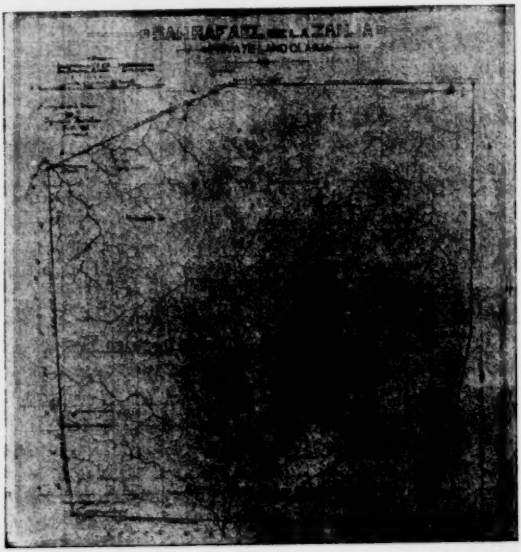
Defendant further avers that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in the grantees of said grant, and that said grantees immediately after the survey of the said tract of land as set out in the title papers of said grant went into the actual possession, use, and occupation of the whole of said tract of land, claiming title to the whole of said tract of land to the monuments described therein; that said grantees and their successors in interest have continuously remained in possession of all of said tract of land under such claim of title from the survey of said tract to the present time, and were in the open and exclusive and peaceable possession of all said tract, claiming title to the whole of same at the time of the treaty between the Republic of Mexico and the United States of America; that said grant documents constituted a complete and definitive grant in fee by way of sale, coupled with the conditions subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed and that this defendant is entitled to a confirmation or recognition of his title to said grant in accordance with the metes and bounds set forth in the original survey and grant of the same; that said grant was not a grant by quantity, but was a sale by the metes and bounds and natural landmarks established by the said survey thereof made by the Spanish officials prior to the issuance of same, and that it vested in the grantees a perfect and valid title in fee to the whole of said tract so surveyed.

Defendant further avers that prior to said treaty, known as the Gadsden treaty, no resurvey of said grant had ever been applied for, or ordered by anyone, and that none of the grantees or their successors in interest had prior to said treaty any knowledge or notice
126 that within the said monuments there was any excess of land over the area stated in said title papers, and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and defendant further avers that if this honorable court should decide that said sale as recited in said title papers did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers, without further payment therefore, he is ready and willing and now offers

to pay to the United States of America any amount that may be found to be due from him for such overplus and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefore is ascertained.

Wherefore defendant now tenders to the United States of America, and offers to deposit with the clerk of this honorable court for the United States of America, the sum of thirteen hundred and fifty-nine dollars in gold coin of the United States of America as payment for all such overplus or surplus of said lands in said grant according to their quality and the price which governed when it was surveyed and appraised, and the further sum of two hundred dollars in like gold coin for the costs of ascertaining and determining the existence or nonexistence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender, and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for any such overplus or surplus, and prays that upon said payment this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by the said decree he be secured in the ownership and possession of the whole of said tract, and defendant answering herein by reason of the fact that he has been made a party defendant, prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and the defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

FRANCIS J. HENEY,
Attorney for Defendant, Harvey L. Christie.



127 *Proof of service.*

I hereby certify that I received the within alias summons and petition and answer on the 1st day of April, 1899, and personally served the same on the 1st day of April, 1899, on Charles Murray, being one of the defendants named therein, by delivering it and leaving with said defendant personally, in the county of Chochise, Arizona, a copy of said summons, together with a true and correct copy of the complaint in this action.

Dated Tucson, April 3rd, 1899.

WM. M. GRIFFITH, *U. S. Marshal.*
By DAYTON GRAHAM, *Deputy.*

I hereby certify that I received the within alias summons, petition, and answer on the 22nd day of April, 1899, and personally served the following-named persons, defendants named herein, upon the several days and at the several places hereinafter set out, to wit: Geo. W. Cheyney, March 22, 1899, at Tucson, A. T.; S. L. Parks, March 23, 1899, 3 miles S. and E. of Chrittenden; Frank Powers and Mrs. Frank Powers, March 23, 1899, 2½ miles S. of Harshaw; Richard Harrison and Richard Harrison, jr., March 23, 1899, at Lochiel; Johanna Sheedy, Nelly Sheedy, and Kate Sheedy, March 24th, 1899, 4 miles E. of Lochiel; Mary Sheedy, March *March* 24th, 1899, 9 miles E. of Lochiel; William Parks, March 24th, 1899, 22 miles E. of Lochiel; Geo. McCarty, March 25th, 1899, 8 miles N. of last-mentioned service, and Henry Harmon, March 25th, 1899, at Washington, by delivering it and leaving with each of said defendants personally, in the first judicial district of Arizona, a true and correct copy of the complaint in said action, and a copy of the summons.

Dated at Tucson April 3rd, 1899.

WILLIAM M. GRIFFITH, *U. S. Marshal.*
By THOS. GRINDELL, *Deputy.*

Filed May 11th, 1899. James H. Reeder, clerk. By R. L. Long, deputy.

128 In the Court of Private Land Claims, Arizona district.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. RICHARDSON, Colin Cameron, et. al., defendants.

Answer of Frank H. Hereford and J. B. W. Gardiner.

Now comes Frank H. Hereford and J. B. W. Gardiner, defendants in the above entitled action, by their counsel, and answering the petition herein, say:

I.

Defendants deny that the State of the West, in the Republic of Mexico, on the 15th day of February, 1828, or at any time at all, granted and

conveyed to Ramon Romero the tract of land described in the said petition.

II.

Deny that the boundaries and distances set out in said petition are the boundaries and distances of what is known as "Rancho San Rafael de la Zanja."

III.

Deny that the map annexed to said petition shows the boundaries of the said rancho, and deny that said rancho contains sixteen (16) leagues or more than four (4) leagues.

IV.

Deny that petitioner is the owner of the Mexican grant, or any grant known as the San Rafael de la Zanza, and deny that petitioner is the owner of the property described in the petition.

V.

Deny that defendant is in possession or claims any property within the boundaries of said rancho.

VI.

And for further answer these defendants say that they are the owners of what is known as the Empire mine, situate in the Old Patagonia
129 mining district (now known as the Washington camp), in Pima County, Arizona Territory, and particularly described and known as the Empire mining claim, and designated by the surveyor-general of the Territory of Arizona as lot No. 40, as appears from letters patent bearing date February 17th, 1877, and recorded in Book 13, at page 768 and following, Records of Mines, in the office of the county recorder of Pima County, Arizona Territory;

That these defendants and their grantors have been in continuous possession of the Empire mine for more than twenty years last past, adverse to all the world.

VII.

That defendants deny that the said Empire mine is within the limits and boundaries of what is known as the Rancho San Rafael de la Zanza.

These defendants, having fully answered, pray to be hence dismissed, with their costs.

HEREFORD & HAZZARD,
Attorneys for Defendants Hereford and Gardiner.

Filed in the office of the clerk, Court of Private Land Claims, March 10, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

130 In the Court of Private Land Claims, Arizona District.

ALFREAD A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, et al., defendants

Separate answer of F. L. Bartlett.

Comes now F. L. Bartlett (who is made a party to these proceedings under a fictitious name), by his counsel, and for separate answer to the petition herein, says:

I.

Denies that the State of the West, in the Republic of Mexico, on the 15th of May, 1828, or at all, granted and conveyed to Ramon Romero the tract of land described in said petition.

II.

Denies that the boundaries and distances set out in said petition are the boundaries and distances of what is known as "Rancho San Rafael de la Zanja."

III.

Denies that the map annexed to said petition shows the boundaries of the said rancho, and denies that said rancho contains sixteen leagues, or more than four leagues.

IV.

Denies that petitioner is the owner of the Mexican grant or any grant known as the "Rancho San Rafael de la Zanja," and denies that he is the owner of the property described in the petition.

131 V.

Denies that he is in possession of or claims any property within the boundaries of said rancho.

VI.

For further answer this defendant says that he is the owner of what is known as the Holland Mine, situated in the old Pattigonia Mining District (now known as the Washington Camp), in Pima County, Arizona, and particularly described by metes and bounds, in the location notice thereof, recorded in Book B, Records of Mines, on page 763 et seq. of the records of Pima County, Territory of Arizona.

That this defendant and his grantors have been in continuous possession of the said Holland mining property for over twenty years, adverse to all the world.

VII.

That he denies that said Holland Mine is within the limits and boundaries of what is known as the Rancho San Rafael de la Zanja.

This defendant, having fully answered, prays to be dismissed hence with his reasonable costs.

J. A. ANDERSON,
Atty. for Deft., F. L. Bartlett.

Filed in the office of the clerk, Court of Private Land Claims, March 10, 1899. Jas. H. Reeder, clerk. By , deputy.

132 *In the United States Court of Private Land Claims.*

In the matter of the confirmation of the San Rafael de la Zanja grant entitled, A. A. Green *vs.* The United States.

And now comes V. H. Igo, one of the defendants herein, and alleges that about the year 1880 he went upon the unsurveyed public lands of the United States, in the foothills on the west side of the Huachuca Mountains, and at a point more particularly described as follows: At a point near a large spring known as the Caricita Spring, with a view to entering under the land laws of the United States a pre-emption and homestead entry, as a home for himself and his family. That he constructed houses to live in, stables and corrals for his stock, dug wells for water, built impounding reservoirs, and conducted waters from springs above him, through ditches to irrigate his land, and controlled and inclosed about 100 acres, and reduced the same to cultivation, and set out thereon several thousand fruit trees, which are now growing and fruit-producing, and he has continued from then until now to occupy and improve the same, and has expended in the improvement thereof over twenty thousand dollars, and the same has constantly been the home of himself and his family and has ever been, and still is, his intention as a citizen of the United States to enter the same under the land laws thereof,
133 whenever the same was open for entry.

He alleges that at the time he so entered upon the possession of said premises and began the improvement thereof, and for many years thereafter, there was no evidence of any private land claim, and particularly no evidence of the location of the private land claim San Rafael de la Zanja; that there were no monuments marking the boundaries thereof; that there was no person in possession of any tract of land within many miles of his said location, and so far as he knows anywhere else, in possession or occupancy of any land claiming the same to be the possession under the said private land claim, and to all appearances, and so far as any evidence of occupation or monument, or other designating marks were concerned, the lands upon which he entered were unsurveyed public lands of the United States, and he insists that his right of entry has vested and did vest in him at the time of his said entry and that is has continued until now, and that he has a better right guaranteed to him by the laws of Congress to the continued occupation of his land and to the entry thereof when surveyed than any claimant whatever who may seek to locate by virtue of the said private land claim.

He therefore prays that his rights may be adjudged to be prior to

and better than said private land claim to said premises in case the same shall be found to be located so as to include his said land.

And the said Igo further represents to the court that the said alleged grant, if the same be valid, was made to one Ramon Romero, who did not convey or sell the same in his lifetime, but that he died leaving four children and heirs, one of whom was Antonio Romero, who inher-
134 ited an undivided one-fourth in and to the said private land claim.

And he also alleges that Jesus Romero was one of the sons and heirs of the said Ramon Romero, deceased, and that he was the owner of an undivided one-fourth in and to the said private land claim. And the said Igo now shows that in February, 1884, by due and proper mesne conveyances from the said Jesus and the said Antonio all their right, title, and interest, for good and valid considerations were conveyed to him, and he the said Igo became the owner of an undivided one-half of the said private land claim.

He therefore prays that he be adjudged by this court to be an owner of the said one divided half of the said claim, if the same be held to be valid, and that his rights be adjudicated in this cause, and he prays for such relief as the law affords.

BARNES & MARTIN,
His Attorneys.

Filed in the office of the clerk, court private land claims, May 12, 1899, Jas. H. Reeder, clerk, by R. L. Long, deputy.

135 In the United States Court of Private Land Claims.

A. A. GREEN)
vs.
UNITED STATES OF AMERICA, ET ALS.)

Now come Patrick Sheehy, Jerry Sheehy, Johanna Sheehy, Katherine Sheehy, Nellie Sheehy, and also come Daniel Sheehy, Mary Sheehy, Eddie Sheehy, who are minors, by William H. Barnes, their guardian ad litem appointed by this honorable court, and represent:

That they are the only heirs at law and children of John J. Sheehy and Katherine Sheehy, deceased.

The' allege that about the year 1879 the said John J. Sheehy and Katherine, his wife, located in what is known as the San Rafael Valley, about three miles north of the international boundary line between the United States and Mexico, on the Santa Cruz River, and at a place where there is a spring of water for domestic and stock purposes. That they settled upon the said premises, believing the same to be unsurveyed public lands of the United States, for the purpose of entry under the U. S. land laws when the same should be surveyed.

That they inclosed a field of about fifty to seventy-five acres, built a house to live in, dug a well for water, constructed corrals and stables for their stock, and that they resided upon the said premises, making the same the home for their family, and they resided there until the death of said John J., in the year 1885, and his widow, said Katherine, continued to live there with her children until her death, in the year 1897, and these parties have continued to live there until now.

136 They allege that at the time the said John J. and Katherine located upon the said premises there was no one in possession or

occupation of any of the lands thereabouts; that there was no one there occupying or claiming to occupy the place they located upon or any other place, claiming to do so by virtue of the Mexican land claim San Rafael de la Zanja. That there were no boundaries designated upon the ground, and no monuments in view—nothing to indicate the location of any grant, and particularly the grant asserted in this case.

They allege that in the latter part of the year 1883 the said John J. Sheehy was informed that there was a pretended Mexican grant called San Rafael de la Zanja, and he made some investigation thereto, and discovered that the same purported to be a grant to one Ramon Romero and the citizens of Santa Cruz, and upon further inquiry he ascertained that some forty citizens residing at the village of Santa Cruz, a town which is located in Mexico, but near the boundary between the United States and Mexico, had raised a fund among themselves for the purpose, and had placed the same in the hands of Ramon Romero, their agent and trustee, and the said Ramon Romero procured the title, whatever it may be as to its legal effect, of the grant San Rafael de la Zanja for the purpose of securing land to the north of the said village of Santa Cruz, pasture land, for the persons who subscribed the said funds and placed the same in the hands of said Ramon Romero, and that the said Ramon Romero acquired said title in trust for the said subscribers to said fund, and they became the beneficiaries thereof and in equity the owners of said grant.

137 That Thaddeus Salgado was one of the beneficiaries of said trust and the owner of an undivided three-fortieths thereof, and that he died leaving as his sole surviving son and heir Juan Salgado, and on the 11th day of January 1883, for valuable consideration then paid to him, the said Juan Salgado, by good deed of conveyance, conveyed to Katherine Sheehy all his right, title, and interest in and to the said grant, as a beneficiary under said trust, the same being an undivided three-fortieths thereof.

They therefore allege that if the said grant be valid for any purpose and to any extent, that they are the owners in equity of an undivided three-fortieths thereof, and they ask that their rights be decreed and determined in this court, according to law and equity, and for such other relief as the law affords.

The said minors, by William H. Barnes, guardian ad litem, and the other parties hereto by Barnes & Martin, their attorneys.

BARNES & MARTIN.

Filed in the office of the clerk Court of Private Land Claims, May 13, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

In the Court of Private Land Claims.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. RICHARDSON, Colin Cameron et al., defendants.

138 *Supplemental answer of Colin Cameron.*

Comes now Colin Cameron, one of the defendants herein, by his counsel, and by leave of court first had and obtained, files this as a supplemental and further answer herein, and defendant alleges that heretofore,

to wit, on September 6th, 1886, the United States of America, one of the defendants herein, brought suit against this defendant in the district court of the Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; that said suit was brought under the act of Congress approved February 25th, 1885, entitled "An act to prevent unlawful occupancy of the public lands," and that the complaint in said suit alleged that this defendant had enclosed a large tract of the public lands belonging to the United States of America, subject to entry at the proper land office under the laws of the United States in such cases made and provided; that the lands so enclosed were in the first judicial district of the Territory of Arizona, in the county of Pima, and that defendant had enclosed as aforesaid about 800 acres of the public lands without any title or claim or color of title acquired in good faith thereto, and without having first made application to acquire title thereto or of any part thereof, according to law; that this defendant answered in said cause and averred that on May 15th, 1825, the Republic of Mexico granted to one Ramon Romero and other citizens of Santa Cruz the tract of land known and described as the Rancho San Rafael de la Zanja, the boundaries of which tract were fully and particularly described in said answer, which grant and tract of land was and is the same San Rafael de la Zanja grant owned by defendant as hereinbefore in his answer in this present case alleged; that this defendant
139 further alleged in his answer in said cause that he was the owner of said land grant, San Rafael de la Zanja, and that the enclosure referred to in the complaint therein was within the original boundaries of said grant as the same were surveyed by the Mexican authorities prior to the issuance of title to same, as said survey is set out in the original title paper of said grant.

Defendant further alleges that said cause was thereafter tried by the court sitting without a jury, and evidence was therein introduced as to the ownership by this defendant of said grant, and of the location of said enclosure and of the location of each monument described in the testimonio of said grant, and findings of fact were made in said case, and in said case it was found and adjudicated that this defendant had succeeded to all the right, title, and interest which Ramon Romero ever had in or to said grant, and had all such right, title, and interest of Romero in said grant; and it was furthermore found and adjudicated by the Supreme Court of the United States in said case that the fence maintained by this defendant was within the exterior boundaries of said grant, as said boundaries were recited and measured in the expediente or title paper of said grant, being a mile and a quarter south of the northern boundary and four miles west of the eastern boundary of land recited as measured in said title papers, and that the grantees of said grant and their successors in interest have always claimed that the said grant conveyed all of the land recited as measured in said expediente to the exterior boundaries measured and described in said expediente; and it was further found and adjudicated in said case that the map hereto attached as Exhibit A is a correct representation of the land included within the boundaries described in the original title paper of said grant, and that said map correctly represents the location of each monument

called for and described in said title paper; and defendant avers that the lands claimed by him are all the lands embraced within the original survey of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant filed herewith as Exhibit A, and defendant pleads such findings of fact as to the monuments and location of said San Rafael de la Zanja land grant as res judicata herein, so far as the east center, the northeast corner, and the north center monuments of said grant are concerned.

ROCHESTER FORD,
Attorney for Colin Cameron.

Filed May 19, 1899. J. H. Reeder, Clerk.

140 And be it further remembered, that afterwards, to-wit, on the 16th day of May, A. D. 1899, the same being the 32nd day of the January term, 1899, the following proceedings were had, viz:

A. A. GREEN
vs.
UNITED STATES ET AL. } No. 2, San Rafael de la Zanja grant.

The trial of this cause was resumed. On motion of Rochester Ford, esquire, John T. Morgan, esquire, was added as counsel for defendant Colin Cameron. Frank J. Heney, esquire, appeared for defendant Harvey L. Christie; Matt. G. Reynolds, U. S. Attorney, and W. H. Pope, esq., assistant U. S. attorney, appeared for the Government. W. H. Barnes, esquire, appeared for the other defendants.

The trial not being concluded, the same was resumed on the 17th, 18th, 19th, 20th, 22nd, 23rd, 24th, 25th, 26th, 27th, 29th, 30th, and was concluded on the 31st day of May, and after argument by counsel for the respective parties, the case was submitted to the court for decision, and was by the court taken under advisement.

The evidence, both oral and documentary, offered and introduced at this session of the court, is as follows, to-wit:

141 In the United States Court of Private Land Claims, January term, A. D. 1899, Tucson, Arizona.

ALFRED A. GREEN
vs.
UNITED STATES. } No. 2. San Rafael de la Zanji grant.

Appearances:

Mr. Rochester Ford, Mr. John T. Morgan, and Mr. Frank J. Heney appeared for the plaintiffs.

Mr. Matt. G. Reynolds, U. S. attorney, and Mr. William H. Pope, assistant U. S. attorney, appeared for the Government.

Mr. William H. Barnes appeared for the other defendants.

On May 16th, 1899, the above-entitled case came up for further hearing and the following proceedings were had therein in open court:

Mr. FORD. We had offered the expediente and the original title papers; we now offer evidence of heirship and continue the documentary evidence.

CONCEPCION ELIAS, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. Give your name and residence?

A. My name is Concepcion Elias; I live at Santa Cruz.

Q. How old are you?

A. I am 68 years old.

Q. Do you know who were the children of Ramon Romero?

A. Yes, sir; I knew all the family.

Q. State the names of the children.

A. He had three sons; the oldest one was Francisco Romero; Pedro Romero, and Encente.

Q. What daughters, if any, did he have?

A. Dolores and Juana; these were his family.

142 Q. Did you know Juan Jose Maria Montoya, who formerly resided in Santa Cruz, Sonora?

A. He was a resident of Santa Cruz also. He is now dead.

Q. Did you know Juan Alejandro Apodaca, who was a resident of Santa Cruz?

A. Yes, I knew him also; he was also a resident of Santa Cruz. He is also dead.

Q. Did you know Juan Jesus Domingues, a resident of Santa Cruz?

A. Yes, sir; he is also dead. He was also a resident of Santa Cruz.

Q. Did you know Juan Xavier Dominguez, who was a resident of Santa Cruz?

A. He is also dead. He was also from Santa Cruz.

Cross-examination by Mr. POPE:

Q. Are any of his sons living at the present time?

A. I do not know; some of them are in California and others at Magdalena River, and the daughters are in Alta, married. I do not know if they live there.

Q. It is some time ago that they lived at that place. You do not know where they are living at now?

A. I know Pedro lives at Magdalena; I do not know about the others.

Q. Are you related to the family of Ramon Romero in any way?

A. No.

Mr. POPE. We object to the testimony of this witness and move to strike it out as being immaterial, irrelevant, and incompetent, especially that part that relates to the family of Ramon Romero.

WILLIAM M. TIPTON, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. You made an examination, did you not, of the archives or records of land grants now located or claimed to be located in Arizona, and similar grants in Mexico?

A. Yes, sir; a great many of them.

Q. This was at the office of the treasurer-general at the present State of Sonora, at Hermosillo?

A. Yes, sir.

Q. State what books of the toma de razon that you found there.

143 A. As far as I recollect there were only two.

Q. Describe them, if you please.

A. Well, I could not do that with accuracy without reference to the notes that I made at the time. One of them was a very small book, I think not over a dozen leaves in it, and that was dated somewhere about—I think the entries in it were about 1824 or 1825; possibly both of those years, but I am not certain. There was a much larger book that covered a long period of years beginning some time in the 30's, I think, and running up into the 40's.

Q. Would your memory be refreshed by an examination of what purports to be an official report made by you and Mr. Flipper (hands witness a copy of said report)?

A. This entry here in regard to the San Rafael refers to the small book that I have spoken of.

Q. Refreshing your memory from an examination of that report, please state what is the date of the last entry appearing in the book which you have denominated or termed the very small one.

A. According to this statement in this printed report the last entry is the 13th of May, 1825.

Q. Is that statement correct, to the best of your recollection?

A. Yes, sir; to the best of my recollection; that report was prepared very carefully by me and Mr. Flipper. I did not read the proof of this book, though; there might have been an inaccuracy in printing it.

Q. Do you recollect whether there was any mark on this smaller book, any designation of its contents, any name of the book on the cover?

A. It seems to me there was a number on it; as to what other designation, if any, I do not recollect now.

Q. Book No. 1, was it?

A. I am not certain; there was a number on it; I do not recol-
144 lect what it was; it is probably stated somewhere in this report; I do not remember.

Q. Won't you look up your data and see what number there is on that book?

A. If I have it, it is probably down at the hotel. You mean my original notes?

Q. Yes, sir.

A. I will look it up; I am not certain that I have it.

Q. Was there any designation on the second book that you saw?

A. I can tell you all these things if I have my data with me.

Q. That is all we want.

Mr. POPE. No cross-examination.

YGNACIO BONILLAS, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. Please state what, if any, books of toma de razon you found in the archives at Hermosillo, Sonora?

A. I found two books of toma de razon in the archives.

Q. State what the general appearance of these books were and what endorsement, if any, there was on either?

A. One of them is a small book; it is marked on the outside of the cover with the figure 1; the other is a large book, and has a sheepskin cover; I do not remember anything about the endorsements so as to give the details about the endorsements.

Q. Do you remember when the entries in the second book, the larger one, began? A. I do not.

Mr. POPE. No cross-examination.

145 Mr. FORD. We offer in evidence a deed from Andres Montiel and Jose Maria Lopez and Angel Leon, commissioners, for the town of Santa Cruz, State of Sonora, Republic of Mexico, to Brewster Cameron, dated the 28th of March, 1885, original and translation, each of which are recorded in the office of the recorder of Pima County, Arizona. (Marked "Plaintiffs' Exhibits F 11 and 12".)

Objection to this deed as being immaterial, irrelevant, and incompetent, and made without authority of law or authority of fact; the parties purporting to act for the town of Santa Cruz having no right to alienate the property.

Plaintiffs also offer in evidence deed from John S. Wood to Robert H. Payne, dated January 4th, 1888, and recorded in the office of the recorder of deeds for Pima County, Arizona. (Marked "Plaintiffs' Exhibit F 13".)

Objection to this deed as being immaterial and irrelevant; it is a tax deed and does not describe the land which it assumes to assess; the lands were not liable for taxation, as they were public lands, and the deed conveys nothing.

Plaintiffs also offer in evidence deed from John S. Wood to Alexander M. Fulford, dated January 23, 1888, and recorded in the office of the recorder for Pima County, Arizona. (Marked "Plaintiffs' Exhibit F 14".)

The same objection as to the last deed.

Plaintiffs also offer in evidence certificate as to the oath of the commissioners of Santa Cruz, dated April 13th, 1885, and recorded in the office of the recorder for Pima County, Arizona. (Marked "Plaintiffs' Exhibit F 15".)

Objection made to it as not being a document subject to be recorded by the laws of the Territory, having no legal force or effect and
146 no evidence of anything, being ex parte.

Plaintiffs also offer in evidence a document recorded in the office of the recorder of deeds for Pima County, Arizona, dated April 18, 1885, appointing a commissioner to fill a vacancy in the office of commissioner of the town of Santa Cruz. (Marked "Plaintiffs' Exhibit F 16".)

Objection to the document because it is inadmissible to record; the document itself is not evidence of anything, and it is incompetent, immaterial, and irrelevant in this case.

Plaintiff also offers in evidence a certified copy of a deed from M. F. Shaw, sheriff, to John H. Martin, dated February 13, 1888, and recorded in the office of the recorder of deeds for Pima County, Arizona, February 16, 1889. (Marked "Plaintiffs' Exhibit F 17".)

Objection as irrelevant and immaterial in this case; further because it is supposed to be a sheriff's deed under judgment, and there is no evidence of the judgment; there is nothing in the paper itself to show that it conveys anything, and no description of the property conveyed; it is not subject to levy.

Plaintiffs also offer in evidence a deed from Alexander M. Fulford and wife to Brewster Cameron, dated February 21, 1888, recorded in the office of the recorder of deeds for Pima County, Arizona, February 27, 1888. (Marked "Plaintiffs' Exhibit F 18".)

The same objection as made to the two tax deeds offered in evidence.

Plaintiffs also offer in evidence a deed from John H. Martin to Robert H. Payne, dated July 1, 1889, recorded in the office of the recorder of deeds for Pima County, Arizona, July 5, 1889. (Marked "Plaintiffs' Exhibit F 19".)

147 The same objection to this deed as offered to the deed from the sheriff to Martin. Plaintiffs also offer in evidence a deed from Robert H. Payne to Alexander M. Fulford, dated August 1, 1889, recorded in the office of the recorder for Pima County, Arizona, September 11, 1889. (Marked "Plaintiffs' Exhibit F 20".)

The same objection as to the deed from Martin to Payne.

Plaintiffs also offer in evidence a deed from Robert H. Payne to Brewster Cameron dated August 1, 1889, recorded in the office of the recorder of deeds for Pima County, Arizona, September 11, 1889. (Marked "Plaintiffs' Exhibit F 21.")

The same objection as to the tax deeds, I think, and also the same objection as to the other deeds foregoing.

Plaintiffs also offer in evidence a deed from Brewster Cameron and wife to Rochester Ford, dated January 8, 1890, recorded in the office of the recorder of deeds for Pima County, Arizona, January 13, 1890. (Marked "Plaintiffs' Exhibit F 22.")

The same objection as to the Cameron deed.

Plaintiffs also offer in evidence a deed from Brewster Cameron and Katharine F. Cameron, his wife, to Rochester Ford, dated January 8, 1890, and recorded in the office of the recorder of deeds for Pima County, Arizona, January 23, 1890. (Marked "Plaintiffs' Exhibit F 23.")

The same objection as to the last deed.

Plaintiffs also offer in evidence a deed from M. F. Shaw, sheriff to Brewster Cameron, dated October 27, 1891, recorded in the office of the recorder of deeds for Pima County, Arizona, October 29, 1891. (Marked "Plaintiffs' Exhibit F 24.")

The same objection as to the others—irrelevant, incompetent, and immaterial to this case; no evidence of a judgment; the property sought

148 to be described is not described, and it is void and not subject to levy.

We will also offer in evidence as soon as the copies are prepared copies of two judgments and of four deeds which are in our possession. That concludes our documentary evidence.

Mr. BARNES. It seems there was offered in evidence at the last term of this court deeds marked "Plaintiffs' Exhibits F 4, F 5, F 6, F 7, F 8, F 9, and F 10." I desire now to offer our objections to all these deeds as being immaterial, irrelevant, and incompetent, and the further fact that the property is not described, and no evidence that these parties had a right to convey the property, the deeds being, therefore, void and of no value.

149 Mr. BONILLAS recalled for further direct examination by Mr. Heney:

Q. How old are you?

A. I am 41 years old.

Q. Where were you born?

A. I was born in the town of San Ygancio, district of Magdalena, State of Sonora, Mexico.

Q. What language were you educated in?

A. Both in the English and Spanish languages.

Q. What course of study did you take in English?

A. The first I took a common course in the common public schools here in the Territory of Arizona, and afterwards I went to the State of Massachusetts to the Massachusetts Institute of Technology in Boston, where I took a course of mining engineering, mining, and surveying.

Q. Did you complete that course there?

A. I completed it as far as it was necessary for my purpose.

Q. What experience have you had, if any, in surveying?

A. I have been engaged in surveying for 15 years.

Q. Where?

A. Both in the State of Sonora and in this Territory.

Q. What experience, if any, have you had in translating documents or in interpreting Spanish into English and English into Spanish?

A. I have interpreted, translated documents as far back as the year 1875; I believe 1874 or 1875, when I was official interpreter at the executive office in this city during the administration of A. P. K. Safford.

Q. Have you ever taught Spanish and English?

A. I used to take private classes here in this city; also in Boston, Massachusetts.

Q. Classes in Spanish?

A. Yes, sir; to English-speaking people.

Q. What office, if any, have you held in Mexico?

A. I have been from the mayor of the towns of Magdalena and Nogales to the highest office that can be had in the district, which is that
150 of prefect of the district; that is, as a State officer. I have held appointments from the general government as mining deputation of the district of Magdalena, and also as commercial agent, this last appointment coming from the department of public works.

Q. Did any of these offices require familiarity with the laws of Sonora?

A. The State office did require familiarity with the laws in connection with the lands.

Q. To what extent have you had experience in surveying in the State of Sonora, in surveying land grants?

A. I have been engaged in that work almost constantly; you might say for 15 years.

Q. How many grants in the State of Sonora have you surveyed?

A. If I have not surveyed a hundred, I should think it would come very near it.

Q. Did you have in each instance the title papers of the grant with you when you made the survey?

A. Sometimes I had the title papers, and other occasions I had certified copies of the expedientes, or original proceedings.

Q. How many grants have you surveyed in Arizona—Mexican grants, so called?

A. I think about 7; between 7 and 10 I should say.

Q. In the grants you surveyed in Sonora and Arizona—I will confine it to Sonora—how did the monuments and natural objects called for in the expediente or title paper from which you took your data for the survey compare with the courses and distances called for in the title papers?

(Objection as immaterial. What they are in Sonora don't affect this case. Taken subject to the objection.)

A. As to the courses I have found discrepancies varying from a few minutes to 60 to 70 degrees, and as to distances I have found them invariably much greater than those called for in the title papers.

151 Q. About how many monuments and natural objects would you say were given in the title papers in your hands in making the surveys in Sonora?

A. I should think in the neighborhood of a thousand.

Q. In how many instances out of that thousand did the courses and distances stated in the title papers bring you to the natural object designated as being there?

(The same objection as the last.)

A. I do not remember of a single instance where the courses and distances given in the documents would bring me to the monuments I was looking for.

Q. How did the quantity contained in these grants you surveyed in Sonora—contained in the boundaries and designated and as located by you from the title papers—compare with the quan'ity of land stated in the title papers to be in the grant?

(The same objections.)

A. Almost invariably I found the area very much in excess to those called for by the title papers.

Q. In how many instances, if any, did you find the area the same as that stated in the title papers?

(The same objections.)

A. In no instance have I found it the same.

Q. In how many instances did you find the land to be less?

A. Only in 2 instances, as to my recollection.

Q. Please give, if you can from your notes, the number of grants which you have surveyed and state what the courses and distances were in the same and how they compared with the natural location, natural land mark called for in the title papers, and what the

152 quantity of land mentioned in the title papers was and how that compared with the actual quantity you found in the title papers?

(Objection as immaterial to this case.)

A. I have not here any of my note books to give instances of difference in courses and distances; I have note books in my room; I have here, however, some notes as to excesses in area.

Q. Kindly give that now?

(Objection to it as immaterial about other grants.)

A. I found in a grant which I surveyed in 1885, I think it was in 1885 or 1886, called the Alamo de Seville, the area called for in the title papers is 4 sitios for large stock. In making the survey the surveyor ran, I believe, 200 cordels or 2 leagues along each cardinal point.

Q. You mean from the center of each point to each point?

A. Yes, sir; which would make it a 16-sitio grant in area. I found the center monument after the north center monument. I found that I could not go to the south center monument because there would be an invasion into other private properties, so I surveyed the grant to the limit of these private properties. I did not find the south and west center monuments, so I gave the grants simply the 200 cordels which the title called for and what I found within these boundaries, an area of $23\frac{1}{3}$ leagues.

Q. Have you that reduced to acres?

A. The total area of the Alamo de Sevilla grant would be 102,355 acres—I made a very approximate calculation; leaving out the demasias the total extent would be 17,354 acres; that would leave an excess of demasias of 85,001 acres.

Q. Was that grant allowed to the owner to the full extent that you have stated?

153 (Objection as immaterial what decision was made; it is not the best evidence of the judgment anyway.)

A. Every proceeding was approved by the Government, and title was issued to the full extent of the demasias.

(Same objection to the answer.)

Q. Was that true of all the surveys made by you in Sonora?

(Same objection to that question.)

A. As far as I know it was so.

Q. To what extent do you know?

A. Well, I know that I have not heard of a single instance where titles were not issued to the demasias as I found them in my surveys, and I could cite a number of instances that I know titles were issued. I know that to be a fact in the case of the Bacamuchi, in the case of Quetaca, in the case of Los Nogales, in the case of Lacanai, in the case of Cienega de Heredia, and I might go on and mention any number.

(Objection to this question and answer on the ground that the titles themselves or the proceedings are the best evidence of the issue of the title and the demasias to which such titles were issued, and on the ground that the same is irrelevant, immaterial, and incompetent.)

Q. Continue your enumerations of the grants and quantities, please, Mr. Bonillas.

A. San Nicolas de las Calabasas, Santa Martina. I have not any more notes here of surveys.

Q. I wish you would bring them with you, then, at the next session of the court. Did you make a survey of the San Rafael de la Zanja private land claim?

A. I did.

Q. From what did you make that survey?

A. I had a certified copy of the title issued August 4, 1885,
154 by the Hon. Royal A. Johnson, U. S. surveyor-general for the Territory of Arizona.

Q. Was that in Spanish or English?

A. It was in Spanish.

Q. Is that your map [hands witness map]?

A. That map was made by myself.

Q. From what?

A. Made from the data I gathered in making the survey of this grant.

Q. Is that a true map from your field notes of that survey?

A. It is, as far as I know, correct in every respect.

(We offer this map in evidence, marked "Plaintiff's Exhibit F 25.")

Q. Please state how you made that survey of the San Rafael de la Zanja grant.

A. I made this survey in the first place by making a reconnoissance for the purpose of defining the monuments and natural land marks called for by the copy of the title papers I had in my possession, which was a method of surveying grants in Mexico.

Q. What was your reason for surveying in that manner?

A. I almost invariably make my surveys by triangulation, for the reason that I consider that method the best when it comes to surveys of considerable extent—the most accurate.

Q. What was your method of surveying Mexican grants with respect to how you would proceed from the center point as to following courses and distances, or what would be your actual method on the ground, to begin with your reconnoissance, as you call it?

A. In my reconnoissance, in the first place try to follow the steps of the original officials by going to the initial point of the survey, and from the description given I would ascertain the directions in which they went to establish the monuments; they are generally names of well-known points given to determine the locations of the monuments on these old land grants.

155 Q. Why did you not start out by following the courses and distance in the title papers?

A. I did that in the early stages of my experience in surveying this kind of grants and I found invariably that I lost time by it and patience, and so I learned from experience not to do it in subsequent occasions.

Q. That was because you never found them to be in accord with the natural land marks called for?

A. That was the reason exactly.

Q. Now proceed with the details of the statements of the manner in which you surveyed the San Rafael de la Zanja grant?

A. In making this survey, being quite familiar with that section of the country and knowing for years, or some years before making this survey, three of the monuments of the grant, which are the three monuments that marked the northern boundary of the town lands of Santa Cruz, at first I did not deem it necessary to go to these monuments; I had two gentlemen from Santa Cruz with me as guides, who were perfectly familiar with all the country around there, and especially with the lands marks and monuments of the grant; so I had them show me the monuments and land marks which I did not know.

Q. Who were they?

A. They were Don Concepcion Elias and Don Vergara.

Q. Do you know where he is now?

A. I do not know; he lives in Santa Cruz and I suppose he is there.

Q. Do you know where Elias is now?

A. He is in town.

Q. Proceed?

A. After they had shown me the points that I was not acquainted with, I thought I would have them and I had them show me the three monuments of which I have spoken as marking the north boundary of the Santa Cruz town lands; I found them to be identically the same as the ones that I knew before. To make the survey proper I pro-
156 ceeded by the well known method of surveying the base line with all possible accuracy, as far as the purposes of the survey warranted establishing triangular points where I deemed them necessary, making a series of angular observations, taking four readings both on the normal and inverted position of the telescope of a transit and then making the necessary calculations for the distances; also establishing a meridian for the triangulation and finally making the calculations of the courses and distances of the perimeter of the grant.

Q. I hand you the original titulo of the San Rafael de la Zanja grant which has been already offered in evidence marked on the envelops "Plaintiff's Exhibit F 2;" I wish you would read the original Spanish from that commencing at the description of the central point and translate it into English and state what you found in conformity with that description?

A. I find in the title a note on the margin which reads: Proceedings of survey then next following said month and year in order to begin the survey of 4 sitios for the breeding of large stock denounced by Don Manuel Costillo, resident of this place, residing in this place, I delivered a hempen cord waxed and stretched to the officers appointed, as well as a Castillian vara, upon which, upon the cord it means, there were measured and counted in my presence 50 full varas, and this operation being performed there were tied to both ends a pole, and being at the central point, which was established by the denouncer under the name of San Rafael, he asked, and whereas, the place known as the Canoncitos which he had selected for the estancia had been found to be within the town lands of this presidio, he asked that there should be added to the three sitios which he had petitioned for in said land, and his petition being just the survey was commenced towards the north along which course
157 there were measured——

Q. Was there anything further describing that central point from where you started?

A. It says: And being at the central point fixed by the denouncer.

Q. How did you find that central point?

A. When I went on the ground—the place is a very well known place in the valley; there are some ruins there, and everybody in that region seems to know that place and pointed it out to me.

Q. Can you describe it any more in detail?

A. The place called San Rafael is on the level mesa where there are a number of old ruins, which is on the east border of the valley of the Santa Cruz; I should think about half a mile south from the place called La Zanja, and perhaps, I should think, about four miles north from the monument now marked No. 111 on the Santa Cruz Valley—Government monument I mean, monument of the international boundary line.

Q. Do you know a ranch house called the five mile house ranch?

A. I do not know it by that name; I know that there is an old ranch there that is called the old ranch at that place called La Zanja, about half a mile to the north of this central monument.

Q. What does La Zanja mean?

A. It means a ditch.

Q. Is there any such thing at that place?

A. Yes, sir; there is; I should think a natural ditch in the channel, in the bed of the valley there; the creek at that place is called La Zanja.

Q. What does the title papers say about running the north line?

A. The survey was commenced by running towards the north, along which course there were measured 200 cords, which ended on a mesa on the edge or border of a wash—arroyo—which runs towards the Penasco—

Penasco is the name of a standing rock there, at the foot of an
158 oak tree upon which there was carved a cross, and furthermore around its trunk a large pile of rocks was placed as the sign of a monument; returning to the center there were measured towards the south 200 cords more, which ended——

Q. Have you been over the ground between the place that you took as the center and this north center monument, so that you can now state whether or not there is any place between the place you took as the north center monument and the center which you took which will answer this description?

A. I have been over the ground and I do not remember of a place that would answer that description, especially if that point is taken in connection with the description given as to the designation of the northwest corner monument of the grant.

Q. Is there any place there which would answer it as the canada around towards the penasco, where you would find a mesa on the bank of an arroyo which runs towards the penasco?

A. If there is I am not aware of it.

Q. Did you look for one?

A. I did.

Q. You did not find one?

A. I could not find a place which would answer that description.

Q. Did you find a place which you took as the north center which did answer that description?

A. I did.

Q. Examine that photograph and state whether you ever saw it before. Refresh your memory by looking on the back of it, if you desire to.

A. I think that is a photograph of the center monument of San Rafael; I find that I have been at the place on two different occasions here; here is my signature.

Q. Did you compare that photograph with that center monument upon the ground?

A. I did compare it very minutely.

159 Q. With regard to the mountains in the background, examine the back of it and state whether at that time you made any record of the fact.

A. I made a record here of observation and comparison on the ground December 3, 1895; also December 4, 1898; my signature is attached.

Q. Did you make your signature at the time of that observation?

A. Yes, sir.

(I will offer this photograph in evidence. Marked "Plaintiff's Exhibit F 26.")

Q. Where in that photograph is the starting point taken by you?

A. It is at the point where that man is standing; in the point where there seems to be a slight elevation of ground or hill, a little hill, or pile of rocks, a little mesa, and there is a pile of rocks and a man standing by it.

Q. What is the appearance of that pile of rocks?

A. That pile of rocks has the appearance of an old monument that has been reconstructed upon the same spot where it originally stood; upon the base of the monument the rocks seemed to be there for a great many years.

Q. Has the base been changed any?

A. Not that I recollect; I think that the rocks that were scattered have been gathered and put on the top of the monument.

Q. Did it have that appearance when you first saw it?

A. I think it had.

Q. What date was that?

A. It was in the early part of September, 1895.

Q. Describe what you found at the place that you took as the north center monument.

A. The north center monument I found a very large big oak tree with some scars on the trunk and a pile of stones around it; this oak tree is on the border of a wash or arroyo which seems to run directly towards the place known as El Penasco.

160 Q. What was the appearance of the pile of stones around the tree?

A. It has the appearance of great age; it is covered with the fallen bark of the tree and brush and leaves and seems to be embedded around the trunk of the tree.

Q. What was the appearance of the tree as to age?

A. Very old oak tree; black oak.

Q. How large?

A. I did not take the measurement, but I think it is 2 and a half and 3 feet in diameter.

Q. What does penasco mean?

A. Penasco means a rock, generally a large rock; and I have met with that description in title papers before.

Q. The word penasco—have you heard it used by Mexican people in Sonora?

A. I have heard it used and I have used it myself.

Q. What kind of a rock is it applied to?

A. I do not know that it is applied to any particular rock. Penasco would be penasco if it were isolated by itself or it would be still penasco if surrounded by other such rocks.

Q. What do you mean, a loose rock, or a rock in place?

A. Either loose or in place to be a penasco.

Q. Do you know of any place out there that is called generally a penasco in that section of the country?

A. I do; there is a place there that seems to be very well known by everybody and known as the Penasco; it is a very noticeable feature.

Q. Was any place pointed out to you by Elias especially as being known by him by the name of Penasco?

A. Yes, sir.

Q. Is that the place taken by you as the penasco?
A. That is the place I took.
Q. And is marked on your map?
A. Yes, sir.

161 Q. From this tree—how is it possible to see that penasco from this tree in looking in the direction in which that arroyo runs?

A. By being at the tree, if I recollect well, you can see the penasco by leaving just a few steps and looking in the direction of the arroyo or wash, which seems to be running directly for that place called the penasco.

Q. Now examine that photograph, please [Plaintiff's Exhibit F 27].
A. That is the photograph of the oak tree with the monument which I took as the north center monument of the grant at the foot of said tree.
Q. Did you compare that upon the ground?
A. I did.
Q. At what date?
A. I compared it on December 6, 1895; also on December 4, 1898.
Q. Anybody with you when you compared it?
A. I think that on the first occasion Mr. Rochester Ford and Col. Colin Cameron were with me, and on the second occasion Mr. Colin Cameron and yourself were with me.
Q. Anyone else?
A. I think Mr. Hudson was along on this second occasion.
Q. Is that a representation of the tree which was taken by you as the north center monument of the grant?
A. It is.
(We offer this photograph in evidence. Marked "Plaintiff's Exhibit F 27".)
Q. Examine this photograph, and state if you can what it represents.
A. That represents the place called El Penasco.
Q. Is that the penasco which you took as being the penasco towards which the arroyo runs upon the edge of which is this oak tree which is represented in the photograph just marked "Plaintiff's Exhibit F 27?"
A. It is.
Q. What is the general appearance of that from the edge of the arroyo by that tree and from the surrounding country in every direction from which you can see it?

162 A. These cragged rocks stand out very well defined wherever you look at them.

Q. At what distance can that particular penasco be observed, or have you observed it?
A. I think I have observed it for ten miles away.
Q. From what particular direction can you observe it?
A. You can see it from the east; you can see it from the south and from points close by it from the west.
(We offer that photograph of the penasco in evidence. Marked "Plaintiff's Exhibit F 28".)
Q. Is it a landmark of any particular prominence in that section of the country?
A. It is.

Q. Examine that photograph and state if you ever saw it before.
A. I have.
Q. Have you compared that with the object upon the ground?
A. I think I have; yes, sir.
Q. What is that a photograph of?
A. It is a photograph of the penasco.
Q. The same one which the preceding photograph represents?
A. I think so; yes, sir.
Q. From what direction was this photograph taken?
A. I think it is taken from the east.
Q. Is there anything on it to show a view of the penasco as one of the landmarks called for in the expediente of the San Rafael de la Zanja private land claim?
A. Yes, sir.
Q. When did you compare it on the ground with the object?
A. On December 6, 1895, and December 4, 1898.
Q. Who, if anybody, was with you at the time of the first comparison?
A. Mr. Rochester Ford and Mr. Colin Cameron.
Q. And the second time?
A. Mr. Colin Cameron and yourself.
(We offer this photograph in evidence. Marked "Plaintiff's Exhibit F. 29".)
163 Q. Examine this photograph and state whether you ever saw it before.
A. Yes, sir.
Q. Have you ever compared it with the natural object on the ground?
A. I think I have.
Q. When?
A. On December 9, 1896.
Q. Who was with you when you compared it?
A. I think, Mr. Rochester Ford.
Q. What does it represent?
A. It is a representation of the valley, I believe; it is known as the Red Rock Creek, along which the wagon road runs from San Rafael to Critenden and represents the valley, on the background the mountains showing the peñasco.
Q. Is that the peñasco which was taken by you as the one referred to in the title papers in this case?
A. It is; yes, sir.
(We offer that photograph in evidence, marked "Plaintiff's Exhibit F 30.")
Q. From what direction is that, looking at the peñasco?
A. That is looking at it from the south.
Q. And about what distance?
A. Probably three-quarters of a mile to a mile.
Q. Please refer to the title papers and state what the description is of the measurement from the north center monument to the northwest monument of the grant.
A. The reading of the proceedings at this place seem to be a little confusing, but by examining into it you can clearly see what is meant. They also estimated 200 cords on account of the roughness of the ground

towards the west from the north center monument which ended at the foot of a red mountain or hill which can be observed—which can be discovered—in an opening between the peñasco and the hills of Sonoita, which must serve as a monument, referring to the red hill; it does
164 not state that they placed anything there then; in speaking of the establishment of the northeast corner they said from the north center monument; they estimated towards the east 200 crodels, which ended in this case—the word sobra may mean upon or it may mean beyond—the Carrisillo Spring, where that particular monument must be placed, as well as at the foot of this red mountain, to which 200 cords were estimated towards the west—that is, that the monument must be placed at the foot of this red mountain, to which were estimated 200 cords, but I did not find any evidence of the monument having been placed.

Q. Now from this north center monument, can you observe any red hill in the direction of the peñasco about which you have been testifying?

A. It is a very singular fact that just about where the north center monument is you can observe through an opening formed by a cañon of this very wash, of which the title speaks, running towards the west, a high chain of limestone hills to the right or towards the north, looking from the north center monument to the west, and they end abruptly into this cañon; also high hills coming down from the same cañon from the south, there is an opening through which you can see this red mountain in the distance, and that is all along the south like looking through a funnel, just like looking through a narrow, and that is all the description given in the title papers.

Q. From the north center monument, can you discover this red mountain through an opening, or at an opening, or at the place mentioned in looking towards the peñasco?

A. Yes, sir; it seems to be in an open place beyond these hills or ridge; there are other hills in the direction of the west.

Q. Did you see a rock which answers the description of the
165 peñasco like the photographs in evidence?

A. Yes, sir; it seems to be very well known by that name.

Q. And north, beyond and through that same arroyo running to the peñasco, you can see a red mountain?

A. Yes, sir.

Q. And only one?

A. I think it is the only red mountain which you can see.

Q. And this red mountain appears to be in an open place?

A. Yes, sir.

Q. Now describe that red mountain, and state whether or not there is anything in that direction which could be taken as a red mountain or any other landmark.

A. Standing at the north center monument this red mountain is at the end of the chain known as the Plomosa Range of Mountains—also known at the present time as the Patagonia Mountains, I believe; it is in the northern extremity. The red oxide of iron gives it a red appearance. This oxide of iron is very abundant on this mountain.

Q. How does it compare in size with the other mountains around it?

A. I think it is the highest mountain in that neighborhood.

Q. From what direction can you see that red mountain?
A. You can see it from all four cardinal points of the compass.
Q. Do you know where the town of Crittenden is?
A. Yes, sir.
Q. Can it be observed from that town?
A. Yes, sir. It is about northwest, I think.
Q. It is in the Sonora Valley, is it?
A. Yes, sir.
Q. Can this red mountain be observed from the Sonora Valley?
A. Yes, sir; you can see it going down the Sonora Valley to the left or to the east.
Q. Is it a prominent landmark from the Sonora Valley?
A. Very prominent.
166 Q. Is it a prominent landmark from the center of the San Rafael grant as you surveyed it?
A. From the center of the San Rafael I do not remember whether it can be seen or not. My recollection is that you can see it.
Q. Now, as you rise on this mesa here, can you see this red mountain?
A. It is a very noticeable feature. It stands by itself. It seems to stand by itself.
Q. Is there any other mountain in that range that has the reddish appearance as that mountain?
A. There may be, but I do not think there is as large a mountain as that. As a matter of fact, it attracts attention from whatever place you may see it.
Q. Examine this photograph and state whether you ever saw it before.
A. I think I have seen that photograph before. I know one of the points is the peñasco.
Q. Where is the peñasco with reference to the man who is sitting in the center of the photograph?
A. It is just here.
Q. Do you see any other prominent landmark that has been referred to in the title papers of this grant?
A. I do not know, I am sure, unless it be this mountain there, which seems to be the red mountain. I could not be certain.
Q. Can you refresh your memory from your notes on the back of the photograph?
A. The peñasco is taken from the summit of the red hill near the foot of the red mountain.
Q. This view of the peñasco is from the west?
A. Yes, sir.
Q. Did you ever compare that photograph with the place at which it purports to be taken?
A. I see by the note I made on the back of it that I did compare it and observed it on the 3rd of December, 1895.
167 Q. Do you know who was with you?
A. Mr. Rochester Ford and Mr. Colin Cameron.
Q. Do you know where a small red mountain is from which that purports to be taken small red hill?
A. Yes; I think it is somewhere near Cottonwood Wells.
Q. Where are Cottonwood Wells from the red mountain you spoke of?

A. It is a very short distance northeast of the red mountain; perhaps half a mile or three-quarters of a mile north from the red mountain, or this little hill at the foot of the mountain.

Q. Can this same penasco be seen from that point which you have been testifying about?

A. Yes, sir; it can be seen from that point.

(We offer this photograph in evidence, marked "Plaintiffs' Exhibit F 31.")

Q. Examine that photograph and state whether or not you ever saw it before.

A. I have examined this photograph before.

Q. Did you examine it upon the ground?

A. I have.

Q. When?

A. I observed and compared it on the ground December 6, 1895; also December 4, 1898.

Q. Was anybody with you when you observed it?

A. In the first instance Mr. Rochester Ford and Mr. Colin Cameron were with me, and on the second date Mr. Colin Cameron and yourself, Mr. Heney.

Q. What is that photograph a representation of?

A. That photograph shows the oak tree on the back, the border of the arroyo, and it shows the red mountain; the oak tree with rocks, the north center monument of the San Rafael de la Zanja grant; it shows the red mountain described as the northwest corner monument.

Q. In which direction is that photograph looking?

A. Towards the west; perhaps a little southwest.

Q. Is that photograph a photograph of the country looking from
168 the point you took as the north center monument, or the red mountain which you took as the northwest monument?

A. It is taken from some point near by; I think to the east of the monument and looking to the arroyo, towards the west.

Q. The arroyo which appears so prominently in that photograph, is that the one which you have testified runs towards the penasco and the red mountain?

A. Yes, sir.

(We offer this photograph in evidence, marked "Plaintiffs' Exhibit F 32.")

Q. The oak tree taken by you as the north center monument which appears in the photograph about which you have just testified about is distinguished in the photograph in what way?

A. Distinguished by there being a man standing under the oak tree.

Q. And the Sonoite Hills lie with reference to that photograph where?

A. To the west of the red mountain which is shown in the distance in this photograph.

Q. The red mountain appears on the photograph as being the most distant?

A. Yes, sir.

Q. Does that photograph exhibit what you described as being the red mountain in an open place through this line down through this arroyo?

A. Yes, sir.

Q. Examine that photograph and state whether you ever saw it before.
A. Yes, sir; I have seen this photograph before.
Q. Did you ever compare it with the natural objects which it purports to be *upon the ground?*
A. I have.
Q. When?
A. On December 3, 1895.
Q. Who was with you?
A. Mr. Rochester Ford and Mr. Colin Cameron.
Q. What does it represent?
A. The penasco.
169 Q. Where was it taken—from what direction and from what point?
A. I think it was taken from the west looking from the west, towards the east—taken from the foot of the red mountain.
Q. Does it correctly represent the view that appears from the foot of the red mountain looking in that direction?
A. I think so; yes, sir.
Q. And the point that it represents?
A. The penasco.
Q. How would you distinguish that?
A. By the penasco itself.
Q. You mean that pointed rock that stands up there on the edge of the highest part of the range that appears farthest from the range in the distance?
A. Yes, sir.
Q. That view is taken from the northwest monument of this grant, is it?
A. Yes, sir.
(We offer this photograph in evidence, marked "Plaintiff's Exhibit F 33.")
Q. Is there any other penasco in that section of the country, or place that is called penasco, or one properly described as the penasco between the place you take as the north center monument and the red mountain?
A. Not that I know of.
Q. There is another mountain called Saddle Mountain. Does that look like a penasco from any direction?
A. It is a rocky mountain on the top, but it has not—I can not remember this bald peak—rocks standing up.
Q. Is it a distinguishing rock, or is it approachable in any direction?
A. I have been on the very top of it on horseback.
Q. Could you ride clear to the top of it?
A Not right up; but I almost went to the top, and then pulled my horse after me on the top. I had a trigo'metrical station there and went to make observations.
Q. When you reach the top that red mountain becomes quite prominent, does it not?
A. It does.
170 Q. And on this side of it it might be termed a penasco in its appearance?
A. Yes, sir; abrupt bluff on the south side.

Q. On the north side you can go right up?

A. Yes, sir.

Q. Does that appear to be a penasco from the point you took as the north center monument of this grant, or from any part of that?

A. No, sir.

Q. Where does it lie from the red mountain?

A. It would be about southeast.

Q. Where would it lie from the north center monument?

A. Southwest.

Q. Is there any other point or object around there that can be seen from the vicinity of this point you have taken as the north center monument from anywhere in that vicinity that has the appearance of a penasco, that could properly be called a penasco?

A. No, sir; except this one that I have taken.

Mr. POPE. Q. Did you say that this Saddle Mountain can be seen from the north center monument?

A. That is my impression.

Mr. HENEY. Q. This side of it—has it any appearance of a penasco?

A. Yes, sir; the north side.

Q. Is the point you spoke of as Saddle Mountain delineated upon your map of this grant?

A. Yes, sir; it is marked upon my map "Saddle Mountain."

Q. And the point which you have taken as the penasco—is that delineated on your map also?

A. Also.

Q. What direction is the penasco from the Saddle Mountain?

A. It is a little west of north.

Q. It is marked on your map "Penasco?"

A. Yes, sir.

Q. What character of country lies between the Saddle Mountain and the north center monument?

A. Very rough country.

171 Q. Examine this photograph and state whether you ever saw it before.

A. Yes; I think I have seen that before.

Q. Can you state positively whether you did or not?

A. Yes; positively. I observed it December 6, 1895, with Mr. Rochester Ford and Mr. Colin Cameron; also on December 4, 1898, Mr. Cameron and Mr. Heney were with me.

Q. Does that represent the arroyo which runs towards the penasco from the foot of the oak tree that is described as the north center monument of the grant, looking from the direction of the penasco?

A. I think so.

Q. That is the bottom of the arroyo?

A. Yes, sir; the bottom of the arroyo.

(We offer this photograph in evidence. Marked "Plaintiff's Exhibit F 34.")

Q. Read the description in the original title papers from the north center monument to the northeast monument?

A. At said place of San Rafael, on the 6th day of the said month and year, I, the said commissioner, in order to—the title paper reads—that

is a clerical error in there—it should read las cuerdas, because that is what they are going to do—having established the monument along the cardinal points from the center monument, they now go to establish the corners, and that is what was called—in the original it reads de las cuerdas.

Q. What would that mean?

A. It would be to go to measure the cords; that is, to form a square; to square up the ground; square the tract of land. That is what it was called; that was the name used by the surveyor in this case; technically, de las cuerdas—the corresponding squares—corresponding to the land surveyed yesterday in the company of the officials appointed for the

172 purpose. I went to the place where the 200 cords ended towards the north, from which monument there were estimated towards the east, on account of the roughness of the ground, 200 cords which ended at the point of the Sierra de la Cobre, copper mountain, upon or beyond a spring known as El Carrisillo.

Q. What does it say, upon or beyond?

A. It simply says sobre.

Q. Your translation makes it either upon or beyond.

A. It may be either one.

Q. Continue the translation.

A. Where the corner monument must be placed.

Q. Did you find the Cobre Mountain referred to?

A. The guides that I had with me informed me that a spur of the Huachuca Mountains was known as the Sierra de la Cobre.

Q. Have you ever heard it called by that name?

A. I made inquiries as to the name of that spur of several people from Santa Cruz who ought to be perfectly familiar, and who are familiar, with that country, and they told me that it was called Sierra de la Cobre.

Q. Old residents of Santa Cruz?

A. Yes, sir.

(Objection to this as hearsay.)

Q. Examine that photograph and state whether you ever saw it and and upon what occasion.

A. Yes, sir; on December 6, 1895, Mr. Rochester Ford and Mr. Colin Cameron were with me, and on December 4, 1898, Mr. Frank J. Heney and Mr. Colin Cameron were with me.

Q. What is that a representation of?

A. It is the Sierra del Cobre.

Q. What particular part of that photograph represents the Sierra del Cobre?

A. The mountain shown to the right of the photograph; the highest part of the mountain in the photograph. It goes down to the south; from north to south. I mean from west to east.

173 Q. Is there anything on that photograph to indicate where the monument taken by you as the northeast corner is?

A. There is a flag there.

Q. What is the appearance of that flag in the photograph?

A. It is a white flag and on the left of the center of the photograph, about midway of the center and the left-hand side of the photograph.

(We offer this photograph in evidence. Marked "Plaintiff's Exhibit F 35".)

Q. From the center of the San Rafael grant as taken by you, at what distance can the De la Cobre Mountain be seen, or can it be seen at all?

A. From the center it can be seen—that is, the point of the Cobre Mountains; I think that the spur of the range that extends towards the south can be seen from there; quite a high ridge of mountains; that particular point can not be seen because there are other high ranges intervening, the Canelo Range, going to the north.

Q. Did you pass any spring there?

A. Yes, sir; as you come near the point of the mountain there is a very prominent spring there, the Carrisillo Spring, known in the neighborhood as Igo Spring.

Q. Have you ever heard it called the El Carrisillo Spring?

A. Yes, sir; many people of Santa Cruz who are acquainted with that country there?

Q. Residents of Santa Cruz?

A. Yes, sir.

Q. Mexican people?

A. Yes, sir; I have known people to go after Indians in early times, and they said they used to camp at that very spring.

Q. What did they say about the name?

A. They called it invariably El Carrasillo or El Carricito.

Q. Examine this photograph and state whether you ever saw it before?

A. That is a photograph of that spring, the El Carrasillo or El Carracito Spring, with the houses around it of Mr. Igo, and an orchard.

174 Q. Did you ever observe that spring?

A. I have.

Q. When?

A. I observed it on the 12th of September, 1895; also on December 4, 1898.

Q. Who was with you the latter date?

A. Mr. Colin Cameron and Mr. Frank J. Heney.

Q. Describe the spring; what is the character of it?

A. It is a spring bubbling out there at the foot of the mountains, at the north end of these Huachuca Mountains and Sierra de la Cobre, and a dam has been made there to gather the water; there is a big body of water there.

Q. How is the flow of this spring?

A. Quite an abundant flow of water?

Q. Whereabouts on the photograph is the spring?

A. I think the spring would be here near these houses on the right-hand side of the photograph.

Q. In what direction are these mountains that appear in the photograph from the water that has been dammed up from the spring?

A. I think these mountains are towards the north, if I am not mistaken; they are either the Mustang or Whetstone Mountains.

(We offer this photograph in evidence. Marked "Plaintiff's Exhibit F 36.")

Q. What direction is the Del Cobre Mountain from that spring?

A. From that spring it is about east and southeast.

Q. Is that spring represented upon your map?

A. It is represented as Carrisillo Spring.

Q. Near the northeast corner monument there is represented on your map the Sierra del Cobre Mountain also: where would be the point of the mountain on the map?

A. It would be near, a little south of the—it would be where the northeast corner monument is marked.

Q. How far beyond the Carrisillo Spring is the place taken by you as the northeast monument?

175 A. I should think about three quarters of a mile perhaps.

Q. What, if anything, did you find at the point taken by you as the northeast monument?

A. It was the proper point for the monument.

Q. There is a monument there?

A. Yes, sir.

Q. What is the character and description of that?

A. There is a big monument there formed of disintegrated rocks, copper stained.

Q. How is it situated with reference to the Del Cobre Mountains?

A. It is right at the foot of the mountains as these title papers state.

Q. Examine that photograph and state whether or not you ever saw it before, and whether you compared it with the natural object?

A. Yes, sir; that is a photograph of the northeast corner monument, the point of this Cerro de la Cobre.

Q. Have you ever observed that upon the ground?

A. I have.

Q. Compared it with the photograph?

A. Yes, sir.

Q. When?

A. September 12, 1895, and on December 4, 1898; in the first instance I had my assistants with me when making the survey, and the second case Mr. Colin Cameron and Mr. Frank J. Heney were with me.

Q. What is the mountain that seems to rise from the front of the photograph towards the top, or the lower part of the top?

A. That is the point of the Cobre Mountains.

Q. What is the appearance of the monument as regards age?

A. Well, the monument is an old monument that has been rebuilt; you can see that the rocks have been gathered together and put on the top; at the base of it it has the appearance of age; it is a very large monument; there was abundant material there for building a large monument and you can see that the base is the base of an old monument.

(We offer this photograph in evidence. Marked "Plaintiff's Exhibit F 37.")

176 Q. Turning to the title papers now, please, the original titulo, and translate from it the description given by the surveyors as to what they did in running from the center monument of the grant to the south center?

A. Having returned to the center there were measured towards the south 200 cords more, which terminated at the mouth of the Canada del Potrero—that is the Potrero Gulch at the same place—where the monument of the town lands of this presidio is to be found, where this presidion of Santa Cruz towards the north is to be found; they mean a monument marked the north boundary of the presidio of the Santa Cruz lands.

Q. Did you find the Canada del Potrero?

A. It is a very well-known gulch, valley, quite a valley, that flows from the northeast to the southwest and enters the main valley of the Santa Cruz River, and at the mouth of this gulch upon a rising elevation there, this monument is to be found.

Q. Is that Canada del Potrero delineated upon your map?

A. It is.

Q. Is that the monument taken by you as the south center monument of this grant the same monument which is the north center monument of the Santa Cruz presidio?

A. Yes, sir; that monument has been pointed out to me on different occasions by old inhabitants of Santa Cruz as the monument that marked the north boundary of the town lands.

Q. Examine that photograph and state whether or not you ever saw it before and on what occasion.

A. Yes, sir; that is the photograph of the south center monument of the San Rafael de la Zanja grant.

Q. Did you compare that photograph with the monument upon the ground?

A. I compared it on December 3, 1895, with Mr. Rochester Ford and Mr. Colin Cameron, and on December 7, 1898, I had young Cameron and Mr. Frank J. Heney with me.

177 Q. From what direction is that photograph taken?

A. That is taken looking towards the northwest, Patagonia Mountains in the distance.

Q. Can you tell whether the red mountain is seen in that photograph?

A. Yes, sir; I think it is that mountain shown at the very end of the Patagonia range; that seems to be the red mountain there.

Q. Is there any high mesa between this point where this monument is and the ground lying in front of that mountain towards the north?

A. Very high mesa down towards the Patagonia Mountains into the valley.

Q. What is the character of this monument?

A. That is an old monument; it has been rebuilt, and the scattered rocks have been thrown on the top, and the base shows it must have been an old monument.

Q. Where is that monument located with reference to the arroyo?

A. It is located on the south bank or border of the Potrero Gulch as that gulch enters the valley of the Santa Cruz.

Q. Is that at the mouth of the Potrero?

A. It is on the top of a little mesa, probably ten or 15 feet above the bed of the arroyo.

(We offer this photograph in evidence marked "Plaintiff's Exhibit F 38.")

Q. Examine that photograph and state whether you ever saw it before.

A. Yes, sir; that is a photograph of the south center monument looking from the Potrero Canada towards the northeast; observed and compared on the ground December 3, 1895, with Mr. Rochester Ford and Mr. Colin Cameron, and on December 2, 1898, with Mr. Frank J. Heney.

(We offer this photograph in evidence, Plaintiff's Exhibit F 39.)

Q. What mountains are shown in the distance?

A. The Huachuca Mountains and the Del Cobre Mountain is in that range also at the north towards the north point of the Huachuca Mountains.

Q. Examine that photograph and state whether or not you ever
178 saw it before and on what occasion?

A. That is a photograph of the initial monument or of the center monument looking towards the west, the Plomosa Mountains, also known as the Patagonia Mountains, in the distance.

Q. Have you ever compared that with that view?

A. I have. I compared it on December 3, 1895, with Mr. Rochester Ford and Mr. Colin Cameron, and on December 4, 1898, Mr. Cameron and Mr. Heney were with me.

(We offer that photograph in evidence, Plaintiff's Exhibit F 40.)

Q. Who is the man who appears in the photograph?

A. Concepcion Elias.

Q. I wish you would turn to the title papers now and read the description given by the surveyors as to how they located the southeast corner monument?

A. The surveyor states that in running from the southwest corner to the north monument of the town lands of Santa Cruz, which is found where the Potrero Gulch opens into the valley. From this monument they continued the measurement of the square towards the east; there were measured 200 cords more which terminated upon or beyond the Jaralito on the corner monument of the fore-mentioned lands of the presidio.

Q. What does jaralito mean?

A. It means a grove of water willows.

Q. Did you find any such place?

A. Yes, sir; the jaralito is a well-known place there; it is a valley, a little stream running through it called Jaralito, and this particular place water willows are found there. I have been over there when these groves were numerous and very abundant. At the present time the floods coming through there have destroyed a great many, but there are a great many of these trees to be found there, these water willows, yet.

Q. Did you find any monument?

A. I found the monument. I had known that monument before this time; it had been pointed out to me when I was making a survey. It is close to the road going to San Pedro from Terrenati and Las Nutras.

179 Q. What was the occasion of that being pointed out to you?

A. I was just going through there; it was just pointed out to me, as somebody was along with me that knew this monument and camped there, near that place. There is water there.

Q. This monument that was pointed out to you—describe that monument. What is the character of it?

A. Well, that is an old monument that is standing at the slope of the mesa, on the slope of a mesa that has every appearance of age.

Q. That is the point taken by you, marked on your map as the southeast corner, is it?

A. Southeast corner; yes, sir.

Q. Turn to the title papers, please, and read the description from the

south center monument to the southwest monument. Do you know whether or not this monument taken by you is the north monument of the Santa Cruz grant, Presidio grant of Santa Cruz?

A. It was pointed out to me as the northeast corner of the Presidio lands of Santa Cruz.

Q. Well, now read from the title papers the description from the south center to the southwest corner.

A. The southwest corner was not established from the south center. The title papers state that after the four monuments were established along the cardinal points from the center monument the surveying party went to the north center monument and from there they estimated, started from the center monument and continued to the east center monument. Having returned to the center, there were measured and counted towards the east 200 cords, which ended after passing or crossing the aforementioned Potrero Gulch upon a continuous mesa, where a large pile of stone was placed as a monument.

Q. Well, did you find it?

A. I did not go from the center to that monument at that time, but I had repeatedly gone in that direction. You go from the center monument toward the east over that mesa, and when you cross the
180 Potrero Gulch right up from its mouth you come to a high, very high, mesa at the foot of the hills of the Huachuca Mountain; there you find this large pile of rocks established as the east center monument of the grant.

Q. What is the character of that pile of rocks?

A. It is a pile of loose stones there, quite a large pile; a very large pile as described here in these papers, and bearing unmistakable signs of age.

Q. Examine this photograph and state whether or not you ever saw it before and on what occasion.

A. This is a photograph of the east center monument.

Q. Did you ever compare that on the ground?

A. I compared it on the ground on December 4, 1895. Mr. Colin Cameron and Mr. Rochester Ford were with me; and again on December 3, 1898, Mr. Colin Cameron and Mr. Frank J. Heney were with me.

Q. Who is the man in the photograph?

A. Don Concepcion Elias.

Q. Is that the appearance that the monument had when you first saw it?

A. I do not think it looked as well built up as it is here; but that monument has also been rebuilt, the rocks have been gathered and thrown on top of it.

Q. How is the base of the monument?

A. The base looks like an old monument.

(We offer this photograph in evidence. Plaintiff's Exhibit F 41.)

Q. Examine that photograph and state whether or not you ever saw it before and on what occasion.

A. Yes, sir; I have seen that photograph before. It is a photograph of the east center monument. I compared it on the ground on December 4, 1895, with Mr. Rochester Ford and Mr. Colin Cameron; again on December 3, 1898, with Mr. Cameron and Mr. Frank J. Heney.

181 Q. Is that a photograph of the east center monument, did you say?

A. Yes, sir; towards the east is the Huachuca Mountains in the distance.

Q. Who is the man on horseback on the right-hand side of the photograph?

A. I think that is Mr. Brewster Cameron. I think it is young Brewster Cameron. Don Concepcion Elias is there by the carriage.

(We offer this photograph in evidence. Plaintiff's Exhibit F 42.)

Q. Turn to the title papers and read the description from the surveyors as to how they located the west center monument.

A. And returning to the center there were measured towards the west 133 cords, for the reason that the 67 remaining for the completion of the 200 cords it was not possible to measure them on account of the roughness of the ground; but it was estimated that they would terminate upon the summit of a high hill which is to be found in the chain of the Plomosa Mountains, also between south and west from the hill known as El Caloso, whereupon the summit was designated as the monument.

Q. What does El Caloso mean?

A. It means lime hill or limestone.

Q. In that section of the country is there a lime hill?

A. Yes, sir; this Caloso hill, which is a very well-known topographical feature.

Q. The point taken by you and described as Caloso ——?

A. It is a hill that conforms to the title papers about southwest from the El Caloso.

Q. Is that represented upon your map by the name of Cerro Caloso?

A. I think it is; it is; the west Cruz monument is towards the southwest from the Cerro Caloso.

Q. Is there any other lime hill anywhere within a radius of three or four miles of the center taken by you?

A. No other point that would be taken for a lime hill. This Plomosa range is known by everybody in that vicinity. They have very
182 bald limestone bluffs, white limestone bluffs, which make it very conspicuous.

Q. Examine that photograph and state whether or not you ever saw it before and on what occasion, and compared it on the ground.

A. That is a photograph of El Caloso. I compared it with Mr. Rochester Ford and Mr. Colin Cameron on December 3, 1895; again December 2, 1898, with Mr. Colin Cameron and Mr. Frank J. Heney.

Q. From what parts of the grant is that observable?

A. I think that can be seen from the center, from the east center, from the south center, from the southwest corner, and from the—anywhere along the valley.

(We offer this photograph in evidence. Plaintiff's Exhibit F 43.)

Q. Turn to the title papers and read how the surveyor reached the southwest-corner monument.

A. They speak of being at the northwest-corner monument at the foot of the red mountain, from which point there were estimated towards the south along the Plomosa chain of mountains 400 cords to a point past the San Antonio Pass on two little hills which form the corner towards

the west of the town lands of this presidio, which point must serve or stand as the corner monument of these sections of land, these sitios.

Q. Did you find the San Antonio Pass?

A. Very well-known pass; I found it.

Q. Where does that pass lie with reference to the town of Santa Cruz?

A. It lies to the northwest of the town of Santa Cruz, in the direction of Tucson.

Q. Did a trail run from that pass in going from Santa Cruz to any place?

A. I understand that was the way they traveled when they went from Santa Cruz to Tucson; they come up the valley of Santa Cruz from the presidio or town of Santa Cruz.

183 Q. Near that pass did you find any object that would satisfy the call of the expediente as to two small hills?

A. I knew that monument from away back in 1885 or 1886; I was then making a survey of the Santa Barbara grant.

Q. Is that located in the United States?

A. That is located in Sonora; the northwest corner of that grant, of the Santa Barbara, is on these very little hills, not over 80 feet from the monument of the town lands of Santa Cruz, which is the southwest corner of the San Rafael de la Zanja grant.

Q. Is there any reference to the Santa Cruz grant in the Santa Barbara grant?

A. The Santa Barbara grant, the papers state that the boundary is the white mountains lying between Santa Cruz and the Santa Barbara grant; the two little hills are very noticeable either from the east or from the west; they are very noticeable from both sides, from the west and from the east.

Q. Can they be seen from the south center monument?

A. They can; yes, sir; I have seen them from the south center monument.

Q. From there can you see the town lands at the San Antonio Pass?

A. Yes, sir.

Q. Examine this photograph and state whether or not you ever saw it before, or compared it on the ground.

A. Yes, sir, I have; that is a photograph of the two small hills; the southwest corner of the San Rafael de la Zanja grant is southeast of the San Antonio Pass. I compared that on December 5, 1895, with Mr. Rochester Ford and Mr. Colin Cameron; also December 2, 1898, with Mr. Colin Cameron and Mr. Frank J. Heney.

(We offer this photograph in evidence. Plaintiffs' Exhibit F 44.)

Q. Where is the pass from these hills on the photograph?

184 A. Towards the north of these little hills.

Q. Examine that photograph and state whether or not you ever saw it before and compared it on the ground.

A. That is the same southwest monument of the grant, south of the San Antonio Pass, which is the northwest corner monument of the town lands of Santa Cruz.

Q. Did you compare it on the ground?

A. Yes, sir.

Q. When?

A. I observed and compared it on the ground December 5, 1895, with Mr. Frank J. Heney and Mr. Rochester Ford and Mr. Colin Cameron; also on December 2, 1898, with Mr. Colin Cameron and Mr. Frank J. Heney.

Q. What is the character or description of that monument?

A. The description is that it is in these two hills south of the pass.

Q. Where does it lie with reference to these hills?

A. It lies between the two hills; in fact there are three little hills there, but from a distance you can only distinguish two. When you go on the ground there are three little hills there close together; one hides the other at a distance so as to make it look like only one; it is between these two hills.

Q. What is the appearance of the monument itself?

A. It is a very old monument; very large monument, too.

Q. Do you know whether that is the northwest monument of the Santa Cruz grant, presidio?

A. It has been so pointed out to me repeatedly; it was pointed out to me in 1886 when I was making the survey of the Santa Barbara grant.

Q. By whom?

A. The people of Lochiel and Santa Cruz pointed it out to me.

Q. Were you making an official survey of the Santa Barbara grant?

A. Yes, sir; they were there for the purpose of identifying
185 their lands; I summoned them in accordance with the laws to show me their monuments. I summoned the municipal president of Santa Cruz and he sent two men to point out their boundaries, and these witnesses went to the monuments and they pointed them out to me.

(We offer this photograph in evidence. Plaintiff's Exhibit F 45.)

Q. Did that monument have any appearance of having been rebuilt?

A. Not at the first time that I saw it; afterwards it had been rebuilt and he had a very high post standing at the center of it with remnants of a flag; I know that when Mr. Quijano made a survey of the town lands of Santa Cruz, and in fact of the whole district of Magdalena, they put up this flag as one of the trigometrical points, also as one of their monuments on the lands.

Q. In doing it did they move any of the stones?

A. They moved the stones from the center on the top; they were scattered.

Q. You think it is the same monument?

A. Yes, sir; it is exactly the same monument; I know it.

Q. Then those people down there did the same as we did, did they?

A. Yes, sir; they did.

Q. Did you bring with you the notes in regard to the surveys in Mexico made by you?

A. I have the Santa Barbara grant, which is quite a large grant; I know the title has been issued to the demasias of that grant; I positively know of that.

Q. What was the quantity called for in the title papers in the Santa Barbara grant?

A. That is a peculiar grant——

(Objection to this question because it is immaterial to this case.)

—the title papers of that grant were lost and it was kept in pos-
186 session; the owners of it held possession of it; they deeded it; there were several deeds, and in one of the deeds they mentioned that this grant extends from certain boundaries on the south to certain boundaries on the north, and from east to west a range of mountains, so in making the survey we took this description, and I know that titles were issued and the demasias paid for at very low rates, not above 2 cents, probably 2½ cents, per acre on account of the long time possession under the grant.

(Objection to this as hearsay and not a matter of record.)

Q. What was the area of the grant?

A. I think there are something like 12 square leagues in that grant.

Cross-examination by Mr. BARNES:

Q. You have been surveying in this southwest country here for about 15 years?

A. Yes, sir.

Q. A part of that time you have been surveying in Sonora?

A. Yes, sir; I have done some surveying in Arizona.

Q. Your surveying in Arizona has been limited to the work of these grants?

A. Most of the work has been on them; yes, sir; not limited, but most of the work was in doing this work.

Q. You have been in the employ of grant claimants in Arizona?

A. Yes, sir.

Q. You have not done any work for the Government in Arizona?

A. No, sir.

Q. In your work in Sonora you went to the expediente and measured out the lines as the expediente stated they were measured?

A. In instances where the grants were intelligible I followed them.

Q. At that time were you working for the Government or private parties?

A. I was in some instances working for private parties, but in a great many instances I had official appointments to survey public lands
187 and to make our surveys of the grants for the purpose of ascertaining the demasias of them.

Q. All of these grants that you surveyed down there had been old grants, as I understand it?

A. Yes, sir.

Q. I mean by old grants, grants that were made before you commenced surveying fifteen years ago?

A. Yes, sir.

Q. You did not survey the grants as new grants—make a new survey for the first time?

A. Yes, sir; many times.

Q. You have spoken here in your testimony that they were surveys of old grants resurveyed by you?

A. I was speaking of old grants. I surveyed many new grants, if I had been asked about such.

Q. Now, taking these grants that you have named this forenoon—these grants had been made many years before?

A. Yes, sir; and certain specified portions of land had been occupied

by the claimants. In some of the cases, to my knowledge, the claimants occupied all the land included in their grants.

Q. What do you mean by all that was included in their grants?

A. Lands inside of their boundaries, as established in the original surveys.

Q. Now, do you mean by that that you testify as a surveyor, expert surveyor, or as a lawyer?

A. I am testifying as a surveyor.

Q. Strictly?

A. Yes, sir.

Q. You are outside your limit of your business as a surveyor.

A. I do not claim to be anything more than a surveyor; that is all.

Q. Were you surveying demasias during the last 15 years?

A. Yes, sir; there were laws by which people who had old grants proceeded to get title to more than they had; other lands included in their boundaries which was entirely in accordance with the laws of the country.

188 I was engaged in ascertaining the area of these grants, in some instances, for the purpose of determining the excess of the area within the boundaries that these people had to pay for.

Q. They had a procedure by which they could get title to the demasias?

A. Yes, sir.

Q. And one of these procedures was to have surveys made?

A. Yes, sir.

Q. Was that survey made by the Government or by private parties?

A. I' was made, the petition, by either *of* the owners of the lands or people who wanted to acquire any excess that might be found inside of these boundaries through an appointment of Government officials.

Q. Who paid these surveyors?

A. The expenses are paid by the party asking for the survey.

Q. And was not these surveyors seeking to carry out the theory of the claimants?

A. No, sir.

Q. Was he under oath to be just to the Government?

A. The Government official made a protest. The protest was made before some judicial officer to make these surveys in accordance with the documents.

Q. Now, referring to the compensation, who was the judge of that?

A. All the expenses were charged up to the claimants before he was allowed to take these lands. The law provides that the fees of the engineers or surveyors shall be paid by the party in interest—by the party asking for the surveys to be made; the law fixes the fees.

Q. Then you would be anxious to please the man that paid you?

A. That would depend on the parties that would be making the survey.

Q. What do you mean by that?

A. I mean from the character of the person that would be making the survey.

Q. How would you do it?

A. How would I do it? I would charge what I considered a

189 good, fair price for my work, and would try to do the best I knew how.

Q. For whom?

A. For the Government; of course the Government, not anybody else; and I would try to make a survey in accordance with the documents placed in my hands, irrespective of who paid for the work.

Q. And would you construe these documents before you commenced the survey?

A. Why, not necessarily. The boundaries would be construed when I went on the grant; I generally did that.

Q. Now, in making these surveys, how did you settle the monuments—by measuring the distances, or by making triangles before you saw the monuments?

A. We would make a preliminary examination of the grant by a reconnoissance, and in that reconnoissance we would determine where the monuments were.

Q. Would that reconnoissance have anything to do with the distances and courses?

A. No reference to the distances or courses; none whatever.

Q. But you would locate these monuments by your reconnoissances and then make the triangulations for the distances?

A. I would make all the reconnoissances according to the calls of the title papers, of the documents I would have in my hands.

Q. And from them you would determine whether the distances would be correct?

A. Yes, sir.

Q. And would these distances and courses in these calls guide you in the making of these artificial monuments?

A. Some times they would, but as a general thing they paid very little attention to them.

Q. Now, is that the method the surveyors used in this expediente?

A. No, sir; they did not make any triangulations.

Q. They simply went and found the monuments and then triangulated to them to ascertain the correct distance?

A. Yes, sir.

190 Q. Now, when you first went to San Rafael for the purpose of surveying this particular grant in the month of September, 1895, where did you go from?

A. I came there from Magdalena; I c'me to Crittenden by railroad; from there I went to San Rafael.

Q. And you said you had two guides. Who were these two guids?

A. The guides that I had with me on this survey were Don Concepcion Elias and Don Enrique Vergara.

Q. Where did you meet them?

A. I met them at Santa Cruz.

Q. At the village?

A. Yes, sir.

Q. Who introduced them to you, or who told them to go with you?

A. I happened to know them before.

Q. Did you take them with you?

A. Yes, sir.

Q. You chose them as guides?

A. Yes, sir.

Q. Anybody suggest them to you as good guides?
A. No, sir; I knew them to be good guides.
Q. Didn't have any suggestion from nobody?
A. No, sir.
Q. That was in September, 1895, you say, and you got these two men at the village of Santa Cruz. Where did you go first?
A. I went to San Rafael ranch.
Q. Where is that on your map?
A. It is shown in the map marked San Rafael Ranch.
Q. And then where did you go from there—who lives there?
A. Mr. Colin Cameron.
Q. And who did you meet there?
A. I met there—I do not remember now. I remember to have met Mr. Brewster—young Brewster Cameron, and the father of Colin Cameron.
Q. Where did you go from there; Mr. Colin Camereon was not there?
191 A. No, he was not there at the time; he was not there during the time I was making the survey.
Q. How long were you engaged in making that survey that time; how many days on the ground?
A. I was 20 to 25 days.
Q. After you went away from the San Rafael ranch where did you go next?
A. I went over the grant.
Q. What was the first place you went to?
A. I think that from there the first place I went to was to the monuments on the north boundary, because I knew already the monuments on the south boundary.
Q. Did you go to the center monument?
A. Yes, sir.
Q. Did you go there before you went to the north monuments?
A. I went there on my way; I passed there on my way.
Q. And that is the center point, as you make it, here north northeast of the San Rafael ranch?
A. About, yes; it is a little east.
Q. I see on this map green-printed backgrounds with squares about a tenth of an inch?
A. Yes, sir.
Q. And your scale is 5,000 feet to the inch?
A. Yes, sir.
Q. Now, is that map drawn true to the scale?
A. Yes, sir.
Q. What is there at the center point where you passed by; what did you find there?
A. I found that monument; pile of stones.
Q. How big was that?
A. It was probably 4 feet in diameter at the base.
Q. And about how high?
A. It stands up about 3 feet high; 3 feet and a half.
Q. Is there any other monument in this grant south of it?

A. Not until you get down to the international boundary line; I do not remember any.

Q. How do you translate that San Rafael de la Zanja?

A. San Rafael of the ditch.

192 Q. Is there a ditch there?

A. There is a deep cut in the valley.

Q. Artificial?

A. It seems to be natural.

Q. Any artificial ditch there?

A. Not that I know of.

Q. Does the word zanja apply to an artificial ditch?

A. It does also to a natural ditch.

Q. And you think you found something that corresponds with the San Rafael title?

A. I was there on that place.

Q. Do you know that old place called San Rafael ruins?

A. Where?

Q. Right where that monument is, north of the mesa.

A. No, sir.

Q. Do you know the place where an old Indian village is—old Indian ruins on the mesa above the river?

A. I do not know them; I know no such place.

Q. Were there any ruins at this point, San Rafael de la Zanja?

A. They must be very ancient. What are they made of—material?

Q. They seem to be an accumulation of soil—probably foundations of houses; they all seem to be made of adobe.

A. No, I could not distinguish any adobes; nothing there of that kind; no signs of that at all.

Q. Were there any ruins south of that, between this point of Zanja and the international boundary, any ruins?

A. Yes, sir; ruins of a house—adobe house.

Q. How far is this point south of that place?

A. About between the San Rafael ranch and the river.

Q. To the east of San Rafael ranch and towards the river?

A. Yes, sir.

Q. About how far from the boundary line north?

A. Well, perhaps, about a mile and a half or a mile and a quarter.

Q. On which side of the Santa Cruz River?

A. West side.

Q. What are these ruins?

A. They are ruins of houses.

Q. Did these guides with you know?

193 A. Yes, sir; that that was called New San Rafael, and they told me when these houses were built.

Q. They were not there when they were built?

A. Yes, sir; they knew when these houses were built.

Q. That was called New San Rafael?

A. Yes, sir.

Q. When did they say they called that New San Rafael, distinguished from Old San Rafael?

A. They said they were built during the French invasion; the Mexicans got inside to protect themselves.

Q. When was the French invasion?
A. You ought to know; some time in the early 60s.
Q. After you had gone to this point of Zanja, San Rafael de la Zanja, of the ditch, where did you go from there?
A. Towards the north.
Q. Went north?
A. Yes, sir.
Q. What point did you go to when you went from there?
A. I went from there to a point called De los Coches, a valley by that name.
Q. You found that on the map? Mark it with this pencil.
A. I could not, positively; I should think it was about here, somewhere, in this neighborhood.
Q. Just make a little cross there. Did you stop there?
A. Yes, sir; I had my camp there.
Q. What particular reason was there to camp there?
A. There was water there; it was a mere matter of convenience.
Q. Was that the first water you had after you left the bed of the Santa Cruz and over the Canelo Hills?
A. No, sir; it was not the first water; it was the first good camping water.
Q. What was there?
A. There was plenty of water there, almost everywhere, and it had rained a good deal; it was in the rainy season, and water everywhere.
Q. Did you meet any water on the route between the point Zanja and this point where you camped?
A. No, sir.
194 Q. Did you examine the country at a point approximately 200 cords north of this San Rafael de la Zanja?
A. No, sir.
Q. Did you go to a point 400 cords to look for a monument?
A. No, sir.
Q. You just triangulated the courses and camped?
A. Yes, sir.
Q. Where did you go to from this point?
A. I went to the Carrasillo Spring; from there I went to the monument—northeast corner monument.
Q. Do you know the Huachuca range of mountains?
A. Yes, sir; very large, high range; beginning about there and runs all along down through here, clear into Mexico; valleys on both sides.
Q. You don't say that this particular range is the only one that runs off there?
A. There are ridges all along on the west side of that range for a distance of 30 miles; there are ridges come off into the valleys; I camped right in the valley.
Q. That large range of mountains is the Huachuaca Mountains?
A. Yes, sir.
Q. What is the name for that range besides?
A. Sierra del Cobre. I think the southern extremity of the Huachuca Mountains was called in olden times the Sierra del Cobre.
Q. Do you know any other name for that range of mountains?
A. I do not know any; no, sir.

Q. Did you notice any signs of copper-stained blue rocks?
A. Yes, sir.
Q. Did your guides tell you there had been copper mines there?
A. I do not remember of any such conversation bearing on the subject.
Q. You heard some traditions of copper being worked on that Sierra del Cobre?
A. No, sir.
Q. Do you know what was the formation of that ridge? Was the lime, or granite, or what kind of formation?
195 A. I think it is a formation of porphyry, and there are copper signs to be seen there on that ridge; there are signs on the sides of the mountains.
Q. On that particular ridge?
A. Yes, sir; high-grade copper on the spur of the Huachuca Mountains.
Q. Where is the copper mine?
A. I do not know the exact location, but I know that there is a camp there.
Q. Is that on that ridge?
A. It is a good many miles; it is a long ways off of the ridge.
Q. How far does the El Cobre spur run?
A. I think that spur runs all along the west side of the Huachuca Mountains to a low pass.
Q. That is about the center of the Huachuca Mountains?
A. That is my impression.
Q. Now, this monument that you saw on the point of the range, which you saw out of these quartz rocks, an old monument, was it?
A. It looked like as old as any of these monuments, apparently; the monument had been removed; there was a road opened by it; the monument had been removed from where the road was.
Q. Highway road was that?
A. It was a road going to a military post at Huachuca.
Q. In your observation of this monument, you think it was an old monument, so far as the base was concerned?
A. It had been built up; the rocks scattered from the monument had been piled on top.
Q. As you observed that monument, was it as old as the north center and Santa Cruz lands monuments?
A. There is no reason for me to believe otherwise; I should think so.
Q. Just the same evidence of age in one as in the other?
A. The same.
Q. As old as the north center or Santa Cruz village monuments?
A. Yes, sir.
196 Q. Did it look as though the rocks had been marked with fire, fire built on this monument?
A. Not that I saw; none whatever; it is covered with grass; this monument had every appearance of age.
Q. Now, the same thing you found, the same evidence of age as the others?
A. Yes, sir.
Q. This monument was the northeast corner monument?

A. Yes, sir.

Q. It has the same evidence of age as the one at San Rafael de la Zanja?

A. Yes, sir.

Q. You say that this monument is as old and has the same evidence of age that monuments have that were built in 1820 and 1830, in those years?

A. I have not so stated.

Q. What do you say about that?

A. I think that is as old a monument on the northeast corner as the other monuments as to age; the same marks of age, the same evidence.

Q. And you think that monument has the same respectability of age and authenticity?

A. Yes, sir.

Q. And hence you think that that monument is an old monument?

A. More than any other I saw and found there as called for in the title papers.

Q. That point marks this Carrisillo Spring?

A. Yes, sir.

Q. There might be another spring at a monument which would not be a corner perhaps?

A. Perhaps so.

Q. Now, suppose you project yourself at a point, say, six miles north of the center monument of the San Rafael, and suppose I show you there a large spring, and I could show you there a copper mine, and I can show you a monument of stones there; what would you say as to that?

(Objection to that question as it is not based on any facts in the evidence. Overruled.)

197 A. I would call that a spring, and a mine with copper, and a monument, but I would not call that the northeast corner.

Q. Why?

A. Because that is a carrisillo spring.

Q. What does carrisillo mean?

A. It means a hollow reed; carrisillo is a small growth of that same plant; it is a kind of a cane.

Q. That grows in wet places, or these springs?

A. Not in all springs.

Q. But it seeks a wet place?

A. Yes, sir.

Q. Did you find any there?

A. Yes, sir; I think there is some carrisillo there.

Q. Now, suppose you take this spring down here with that same plant in the spring, and a monument, and a copper hill, would you think that that had anything to do to determine that that was a corner monument?

A. If that was also known as Carrisillo Spring, I might consider that as a corner monument.

Q. What does the word sobre mean?

A. It means upon, or beyond, or over, or above; it depends on the connection in which the word is used.

Q. If I should tell you that there was a monument of stones sobre a spring, would you think that that monument would be below the spring or above it?

A. That would be above or beyond the spring.

Q. How far away is this monument from this Carrisillo Spring?

A. It is about three-quarters of a mile; it is towards the point of the ridge.

Q. After you made your examination and observation of this spring, then where did you go?

A. I went back to my camp.

Q. Where the hog pens were?

A. Yes, sir.

Q. After you camped, where did you go from there?

A. I went to the north center monument.

Q. Did you go direct there?

A. Yes, sir.

Q. Did your guides know where they were going?

198 A. Yes, sir; they took me right to it.

Q. You did not stop anywhere to search for it?

A. No, sir.

Q. You did not look for any other?

A. No, sir.

Q. Where did you locate that oak tree?

A. I found an oak tree on the border of a dry wash, or mesa, which runs towards the Penasco.

Q. You did not look for any other oak tree?

A. That was on the border of a dry wash, which answered the calls of the expediente.

Q. Did you look for any other?

A. I did not.

Q. You did not look for any other?

A. No, sir.

Q. I see upon your map you have put down the courses of a great many streams or rivers; what are they made for?

A. They are simply to show approximately the locations.

Q. By actual measurement of the courses and distances?

A. No, sir.

Q. You have marked on this map Canelo Hills; is that a divide, or watershed?

A. Yes, sir.

Q. They are southeasterly towards Santa Cruz?

A. Yes, sir; and northwesterly.

Q. Sonoite is a point here about where my pencil is, and the water runs off towards Santa Cruz, and off here towards Sonoite, and this is pretty near a dividing line between these two water courses?

A. Yes, sir.

Q. And these streams that you put in here show approximately the courses of the water?

A. Yes, sir.

Q. These Canelo Hills, are they high hills from a point here west?

A. Yes, sir; high hills—high range of hills.

Q. As high as Saddle Mountain?

A. That is, about as high; may be higher.

Q. How about Penasco?

A. I believe it is as high.

199 Q. Has that hill a flat mesa on top?
A. No, sir; that penasco is a kind of a sharp hill.
Q. A man on horseback with this vista before him, as he rode on, what peak would he see first?
A. Looking toward the north he would see that Canelo range.
Q. And suppose he looked to the left as he rode on?
A. I do not think he would see any peaks to the left; I think he would see something like high mesas along here by Saddle Mountain.
Q. Saddle Mountain would come in view to your left?
A. Yes, sir.
Q. Now, you rode up there?
A. Yes, sir; many times.
Q. Which one of these two peaks is the highest peak?
A. I think the penasco is higher than Saddle Mountain.
Q. Which is the most prominent as you look up from this valley?
A. It depends from the point of observation.
Q. Saddle Mountain is nearer to the valley?
A. Yes, sir.
Q. These red lines on your map are lines of your triangulations, are they?
A. Yes, sir.
Q. Your notes would give us the courses and distances of these lines?
A. Yes, sir.
Q. What is the direction from the north cruz monument as you have it here to what is called the northwest corner monument?
A. It is marked down on the map there 65 degrees, 27′, 42″ east.
Q. The same course you have got in your notes?
A. Yes, sir.
Q. This northwest corner is near Red Mountain?
A. Yes, sir.
Q. What topography do you find standing anywhere looking to the west at the horizon?
A. Looking towards the west low country cut by deep gullies.
200 Q. What range of mountains do you see here?
A. Plomosa or Patagonia mountains.
Q. Are these mountains well known as such mountains?
A. Yes, sir.
Q. Now, looking from any point along here on this mesa towards the west, towards the horizon, could you look in any direction without seeing a red hill, looking to the horizon to that whole Plomosa range?
A. I have not paid any particular attention; I do not remember that they are red; they are green, covered with vegetation; I was not particularly impressed with the red color of these mountains; I think they are dark gray; the vegetation on the hill is very noticeable.
Q. Did you ride on top of the penasco?
A. No, sir.
Q. Do you know where from that point the town of Harshaw is?
A. I think that is southwest.
Q. And about how far is it to Harshaw?
A. It might be a couple of miles.
Q. Water can run between the penasco and Saddle Mountain as you

have it here; that is, running from the Saddle Mountain and the adjoining hills towards the northwest, between these two points and this mesa here?

A. Yes, sir; the water makes a dip down this way; the water runs from the mesa through these two mountains; a deep depression; and they cut out deep gullies, and these gulches are quite wide.

Q. You have got them all down?

A. I did not try to.

Q. You do not pretend to say these delineations are accurate delineations—I simply want to know the facts about it—is that the watershed down in this direction?

A. I think these streams run about where the watershed is.

Q. At the top of this Saddle Mountain, what did you find?

A. I found small rocks.

201 Q. Does the rock crop out; is the mountain covered with earth?

A. They crop out on the west side and on the north side; towards the south on the east it is covered with small rocks and earth.

Q. That is a pretty abrupt mountain?

A. Very abrupt at the south and west.

Q. Very abrupt on the south and west?

A. Yes, sir; on the south and west there are very perceptible bluffs there.

Q. Almost precipitous?

A. Yes, sir.

Q. You went down on horseback from Saddle Mountain?

A. Yes, sir.

Q. Now, at this point, then, you found no artificial monument?

A. No, sir; I did not.

Q. Then the only artificial monuments you found were the center monument and the northeast corner one?

A. Yes, sir; and the north cruze.

Q. Did you triangulate from the top of Saddle Mountain to any arbitrary point?

A. To the west cruze monument southwest of Cerro Caloso.

Q. You did take a triangulation from the top of Saddle Mountain to the west cruze monument?

A. You have it there; it is so marked.

Q. You continued your instrument on a line from the top of Saddle Mountain to the west cruze monument?

A. Yes, sir; I made an observation; Saddle Mountain was called Picacho Point; it is known as Saddle Mountain by Americans, English speaking people; by the old Mexicans, Picacho.

Q. What is the difference between picacho and penasco?

A. Picacho is a mountain with an acute point, and penasco is a big rock.

Q. Now, then, is there any artificial monument at the west cruze monument?

A. No; on the southeast corner there is an artificial monument which was the northeast corner of the Santa Cruz lands.

202 Q. Now, at the point east cruze monument you found an artificial monument there?

A. Yes, sir.

Q. That would be about 9 inches, pretty near 9 miles northeast?

A. It is slightly to the northeast.

Q. Now, if you had gone out there you would have found a mesa above the Canada del Potrero?

A. Yes, sir.

Q. Suppose you would go out a league or three leagues and come into this watershed above the Canada del Potrero, would you find a mesa?

A. Yes, sir; there are mesas all over there.

Q. Now, then, all the artificial monuments you found were at the center monument, northeast monument, north cruze monument, and the east cruze monument, outside of these two Santa Cruz monuments?

A. Yes, sir.

Q. Is the general topography of this country a mesa of land up the Santa Cruz River and its tributaries generally a mesa country?

A. Yes, sir.

Q. And cut up by these water courses?

A. Yes, sir.

Mr. POPE:

Q. You spoke of the northwest and northeast corners of the Santa Cruz lands; did I understand you to say that they coincided with the southwest and southeast corners of this tract as you surveyed it?

A. Yes, sir.

Q. You spoke of the survey of that tract of the Santa Cruz lands; by whom was that made?

A. That was made by Don Fiacro Quijano, who was appointed for the purpose.

Q. When was that survey made?

A. I think it was made, if I am not mistaken, in 1888; I am not certain, though.

Q. That was a survey of the Santa Cruz town lands?

A. That was a survey of the Santa Cruz lands with some modifications; it purported to be.

203 Q. In what respect was the modifications?

A. As to the parts lying by the southeast corner and southwest corner, there were a good many contentions; a good many lawsuits among the parties of Santa Cruz and other outside parties, and they had this survey made among themselves, and they got together and said if they did not have these town lands properly allotted among the different heirs of the families in the town that they would probably lose them all, and they sent a commission and begged the governor to interfere in settling these titles so as to save these lands, and I know the governor advised them to make a survey of what lands they had left, that part of them, and they adjusted the boundaries at the time that survey was made.

Q. You spoke of this southwest corner of the San Rafael de la Zanja in connection with the Quijano survey?

A. No, sir; I did not.

Q. You mentioned the Quijano survey in connection with that southern monument having been down there?

A. I think about the time of that survey was the last time I was at

this monument, at the southwest corner monument of this grant, which is the northwest corner monument of the Quijano survey of the lands of Santa Cruz, and there was a high flag pole placed in the center of this monument, put there by this surveying commission when Don Fiacro Quijano was making his survey of this northwest corner.

Q. That northwest corner monument you mean to say is identical with southwest corner monument of this grant?

A. Yes, sir; the northwest corner of the Quijano survey of the Santa Cruz lands is that very monument.

Q. Well, as to the northeast corner of the Santa Cruz lands being the same or a different point from the southeast corner of this grant?

A. It is a different point.

204 Q. What is different?

A. The point is farther to the west; that is, a point that was agreed upon by the people of Santa Cruz so as to avoid a lawsuit; they had acquired lands to the east of that point, lands already titled, called La Bota; they are now north of the Santa Cruz up to the boundary line.

Q. How far is this monument of the Quijano survey from the monument that you testified to as the southeast corner of this grant, the southeast corner of this grant which was the original northeast corner of the presidio town lands, to the northeast corner of the presidio town lands as shown in the Quijano survey?

A. I cannot give you that distance now.

Q. What is the distance from the south center monument of the San Rafael de la Zanja grant, which the north center monument of the ancient town lands of Santa Cruz, to the northeast corner of the town lands as shown by the Quijano survey?

A. The distance is 21,236.2 feet. The distance from the same north center monument of the town lands of Santa Cruz, which is the south center monument of this grant, to the ancient northeast corner of the town lands is 40,685.2 feet.

Q. I am trying to get the distance from the northeast corner of the Santa Cruz lands as located by Mr. Quijano to the same corner as located by you.

A. That would be very approximate; that would be approximately 19,449 feet.

Q. That is the difference between the northeast corner of Mr. Quijano's survey and your southeast corner of your survey?

A. Yes, sir.

Q. These photographs that have been shown you, were they made on this survey which you have testified to?

A. No, sir.

Q. Were they made on any survey when you were in attendance?

205 A. No, sir; not when I was in attendance.

Q. Do you know when they were made, or approximately?

A. No, sir.

Q. You testified this morning as to the Alamo de Sevilla grant. As a matter of fact, in running out your measurements in that grant you found that the measurements were greater than the natural objects from the center point?

A. What do you mean by the natural objects?

Q. In the survey of the Alamo de Sevilla you found that the distances named in the expediente would run out beyond, was greater than the distances named from the center monument to the natural objects?

A. I do not know that the natural object was named at all in running from the center monument; what was shown to me then as the boundary line of the Bacamuchi grant, and I stopped on that boundary, as I had been informed that the Bacamuchi grant was a new grant.

Q. You testified in the Calabasas case in this court?

A. I did.

Q. Did you not in that case say that the south center monument is said to be almost 27,480 feet, and that you only found it to be 23,713 feet; did you testify to that fact?

A. I do not remember exactly as to the points.

Q. So that the distance when run out according to the calls of the expediente was greater than the distance to the natural object named?

A. No, sir; that is not true.

Q. You did not go to that point?

A. I did not go to that point; it was inside of the Bacamuchi, and I did not go beyond these boundaries.

Q. Where does this arroyo that you described as running by the penasco empty?

A. I am not certain as to that; I think it empties into one of these branches of the Sonoite Creek.

Q. This north center monument, on which slope of the Canelo
206 Hills is that?

A. That is on the north extremity, I think, of the Canelo Hills.

Q. And with respect to the watershed between the Babocomari River and the Santa Cruz River?

A. It would be there on the west of the Babocomari; I think it empties into the Sonoite Creek, turning off along this arroyo.

Q. I understand the Sonoite Hills are west of the Sonoite River?

A. Yes, sir.

Q. For what distance do they run along the Sonoite River on the west side?

A. I think they run all along the Sonoite River on the west.

Q. On the west side of the river?

A. Yes, sir.

Q. These hills run all along the Sonoite River on the west side?

A. Yes, sir; there are hills running all along on the west side.

Q. Did you or did you not state as to whether or not these Sonoite Hills are visible from your north center monument?

A. I believe they are not visible.

Q. What cuts them off?

A. I think these high ranges just between the Red Mountain in the distance; and the Red Mountain cuts them; there are hills on both sides of this narrow picacho.

Q. Standing at the north center monument, or anywhere east of that Red Mountain, the Sonoite Hills are back of it to the west?

A. Yes, sir.

Q. Are you acquainted with the survey made in the Sonoite case in this court?

A. I am not.

Q. You do not know, then, as to the Red Mountain named in the expediente?

A. No, sir; I do not.

Q. How close is this monument on the southeast corner of the grant to this road running to Santa Cruz?

A. I should think it is—my recollection about 250 or 300 yards.

Q. It is close to it?

A. Yes, sir.

207 Q. You say it is on the top or on the foot of a mesa out there?

A. It is on the slope of a mesa, close to the foot.

Q. Did you find any artificial monument at your west center monument?

A. No, sir.

Q. This El Caloso is a peak, and Washington Camp is located on a part of its slope?

A. Yes, sir.

Q. What is the size of that hill?

A. It is quite a good-sized hill; it is right there at the foot of the Patagonia Mountains, on the eastern slope.

Q. Quite a high hill, is it not?

A. Well, if you look at it from the valley it looks quite high.

Q. Did you ever climb on the top of it?

A. No, sir.

Q. What direction is the west center monument from it?

A. About southwest from El Caloso.

Q. Is that higher or lower than this one?

A. I think it is higher.

Q. Any artificial monuments there?

A. There are no artificial monuments there; none said to be established there.

Q. There are in that direction from El Caloso a number of cerros in the mountains?

A. No, sir; this hill is a very distinct hill there, and just cuts that gulch between the Caloso and this other hill, and this other hill described as the west center monument is detached on the west from the main range and divided from the Caloso by a deep gulch.

Q. How do the main Patagonia Mountains trend from that point?

A. The crest of the mountains about north and south.

Q. Along the foot of these mountains going west, what as to its topography?

A. It seems to be a basin; a deep basin there running from this hill to the west and to the south; deep basin as you come to the San Antonio Pass.

208 Q. There are foothills all along there also?

A. Yes, sir.

Q. Some near and some farther?

A. Yes, sir.

Adjourned.

MAY 17th, 1899, ten a. m.

Mr. POPE:

Q. Mr. Bonillas, I believe you stated on your direct examination that this white spot indicated here on plaintiffs Exhibit F 35 is the place in which you entered the northeast monument of this grant; you testified as to it?

A. Yes, sir.

Q. Where is the spring that you designated as the Carricillo spring with respect to that flag on that photograph?

A. It is approximately—it is not—I do not think it is shown here.

Q. What part of the photograph would it be?

A. It might be there; it might be where these trees are, if anywhere.

Q. That being Igo's house there at the right-hand side of the picture, where would that spring be with respect to it?

A. It would be to the right of the house.

Q. How close to it?

A. The house is just not over 50 feet or a 100 feet.

Q. Do you recognize that house as being Mr. Igo's house, where he resides?

A. I could not tell for certain, but I think so.

Q. It is your idea that the spring is about 50 feet from the house?

A. I said the point of the reservoir from the spring would be perhaps a 100 feet, or a 150 feet to the right of the house as you look towards the east.

Q. On that photograph in what direction from the house?

A. To the right.

Q. I wish you would look at this photograph, plaintiffs Exhibit
209 F 36, and state, if you know, what valley that that shows there.

A. I do not know to what valley you refer; I see a reservoir at Carricillo Spring or Igo Spring in this photograph.

Q. Do you see some mountains on the other side?

A. Yes, sir.

Q. Which you testified *as* to as the Mustang Mountains?

A. I said I through, they were the Mustang and Whetstone mountains.

Q. Do you see a valley lying between that spring or lake and the mountain on the opposite side?

A. I think there is a valley there; yes, sir.

Q. What valley is that?

A. The Barocomari Valley.

Q. I wish you would look at plaintiff's Exhibit F 34 and state whether or not the tree you took as the north center monument appears in that.

A. No, sir; it does not.

Q. I wish you would look at plaintiff's Exhibit F 26, photograph, and state if the Canelo Hills are shown on that photograph mentioned on your plat.

A. I am unable to tell; if this photograph is looking towards the north the lower range in here would be the Canelo Hills.

Q. You said that you had compared that photograph with the natural objects as they lay on the ground?

A. I did at the time; yes, sir.

Q. Is that the view on the north from that place, the center monument?

A. That looks like a view to the north.

Q. What is this higher mountain lying back of the Canelo range?

A. To the right in the photograph?

Q. Yes, sir.

A. That would be the Sierra del Cobre or Huachuca Mountains.

Q. That whole range that you have got laid down lie back of the Canelo Hills which you have described?

A. Yes, sir.

210 Q. What is this mountain here which is at the extreme right-hand side of this photograph?

A. That would be a spur of the Huachuca Mountains. That is about the center of the range as you look from the monument to the east-northeast; about the center of the Huachuca there is a depression, and I think there where back of where the man is standing to be the depression. I forget what the name of that pass was; I was told.

Q. Tanner's Pass?

A. Tanner's Pass; I believe that is the new name for it.

Q. Where do the Canelo Hills come to the Huachuca Mountains with respect to that pass?

A. They do not come to the mountains in the Canelo Hills, and if I remember correctly they come at a point northwest from the east center monument of this grant.

Q. How far to the northwest?

A. It may be a mile or two.

Q. And how far to the west of the Huachuca range?

A. The end of the Canelo range would be three or four miles.

Q. Now, where is the south end of the Canelo range with respect to this pass—this Tanner's Pass?

A. It is about west.

Q. And at what distance?

A. Three or four miles.

Q. What is the character of the country in between the north end of this Canelo range and this pass?

A. There are some potrero gulches come by the end of the Canelo Hills, on the east end of the Canelo Hills, which is deep down—deep depression; they are very high mesas to the east. Potrero Gulch is between the south end of the Canelo range and Tanner's Pass.

Q. What did you say was the direction of the east center monument from the Canelo Hills?

A. About northwest from the east center monument—no, the east center monument is southeast from the Canelo Hills.

211 Q. And what distance?

A. A mile and a half or two miles.

Q. And in what direction from this Tanner's pass is your east center monument?

A. Perhaps a little southwest.

Q. What is the course of observation from the east center monument to this pass?

A. It was given to me then as the Elias pass or Sycamore pass, and the course would be north 56 degrees and 26′ east.

Q. Did you take any bearing from this monument to the end of the Canelo range?

A. I did not.

Q. What do you call the Cobre Mountains; is this range of mountains that is shown on the extreme right-hand side of this photograph that range?

A. No, sir; they are I think north of this photograph; from that place that you have been speaking of as Tanner's pass to the north to the end of the Huachucas, to the north end of the Huachucas.

Q. What distance from the north end of the Huachucas?

A. I do not know what it is; I believe the Sierra del Cobre is on that side of the mountains of Tanner's or Elias' pass towards the north.

Q. Do you know anything about where this Canelo range ends on the west?

A. On the west I think possibly the range ends at a point close to the north center monument of the San Rafael de la Zanja grant, and they would end at about the southwest corner of the Babocomari grant.

Redirect-examination by Mr. HENEY:

Q. I believe you answered a question of Judge Barnes by saying that all the work you had done in land grants in Arizona was as an expert for the claimants of grants, did you?

A. The work in connection with the surveys of land grants.

Q. You testified before this court in the case of William Faxon, jr., versus the United States, as an expert for the Government of the United States through the agency of Mr. Matt. G. Reynolds, and did you
212 not testify as an expert for the Government in the Sopori Land Company versus the United States?

A. I did; not in making a survey though; it was in the examination of documents relative to that grant.

Q. What was the ordinary and customary method of the ancient surveyors in Mexico and Sonora, by ancient I mean to say grant from 1820 down to 1854; what was the customary method of determining the cardinal points of the compass as shown you by your experience in resurveying grants of that period?

(Objection to the question as it is manifestly apparent that the United States can not know as to the facts of that kind; the custom is immaterial, irrelevant, and incompetent. Overruled.)

A. The numerous expedientes and title papers that I have examined relate that their ways of determining courses were by means of the compass, and I have known, and two that I know, two small hand compasses used for this purpose in very early times of this century; I know that I had a small compass belonging to my grandfather who was one of these old surveyors himself, and it is a little bit of a compass and probably an inch and a half in diameter that you could hold in the hand, and almost anything would deviate the needle from its course.

Q. Now from your observation upon the ground what was the practice; was the compass taken in a general direction?

A. That was generally the way as I have found in my experience of surveying; they would call a valley running northwest and southeast, they would call that direction towards the northwest in perhaps 9 cases out of ten, they would call that north, and the opposite direction they would call south; whether it was north 45 degrees west, or north 60

degrees west, or north 20 degrees west, they would call that north,
213 and the directions at approximately right angles to these courses they would call east and west.

Q. And the same as to monuments which they would locate along streams?

A. Yes, sir.

Q. You were asked about some old ruins that were near this place San Rafael, have you ever heard who built the houses of which these are ruins?

(Objection as hearsay. No ruling. No answer.)

Q. Have you heard the people living in Santa Cruz, the old residents, say anything about who built this place?

(Objection as hearsay.)

A. Yes, sir; I think that one of the very men who built that house told me about them.

Q. Who built them?

A. Concepcion Elias told me that I think that he had lived there and helped them to build these houses.

Q. Which houses do you mean?

A. I mean the adobe ruins that are hear at San Rafael ranch on that map.

Q. Where is that from the center monument taken by you?

A. From the center monument perhaps a little west of south, east from the San Rafael ranch, about there, just above the word "Rafael" of the description San Rafael ranch on the map.

Q. Is that where Governor Piscarro is said to have lived?

A. I believe that is where he lived.

Q. At what time?

A. During the French invasion when he was driven out of the State by the French and their allies.

Q. What have you heard from the residents of Santa Cruz and from parties who claim to know at what time these houses were built?

A. They were built some time in the early 60's, I believe.

214 Q. How do they compare in appearance and age with the ruins at the place you have taken as the center of this grant?

A. The ruins at the center of the grant must be much older ruins.

Q. What indicates that?

A. The fact that more piles of soil are accumulated on the foundation of the houses, and at these other ruins, these adobe ruins, you can see the materials of which the walls were built; the lower part of the adobe walls are still standing.

Q. I believe you were asked the question if you found a spring out in here about 2 inches to the north of the Canelo Hills at a point about as represented on this map right about here, 2 inches from the eastern boundary as represented on this map, would you have, in the absence of being told the name of the spring, taken that as the northeast corner monument of this grant?

A. No, sir; it would seem an absurdity to take that as a northeast corner; I would not think of it.

Q. What is this map?

A. This is a map of the San Rafael de la Zanja grant according to a

survey made by Mr. George J. Roskruge, county surveyor, Pima County, Arizona Territory, April, 1877. (Plaintiffs' Exhibit F 52.)

Q. Does the northern boundary of the San Rafael grant as represented upon this map in black lines correspond exactly with the survey as made by you?

A. No, sir; it does not.

Q. What represents the survey made by you upon this map?

A. The red lines.

Q. Now from the northern boundary of the San Rafael grant as represented by your survey on this map, would some of the country rise to the north?

A. It is level or slightly descends, rises to the north, down to the Babocomari grant and opens out to a large valley there.

215 Q. And this north center monument which you have testified to, where does it lie with reference to that mesa?

A. That runs off towards the north just on the south border of that mesa; from there the country slopes off in a mesa gradually.

Q. The mesa does?

A. Yes, sir.

Q. Towards the north?

A. Yes, sir.

Q. How far north is the Babocomari grant from the northern part of this grant, of the San Rafael?

A. I do not know positively, but I think it is probably three or four miles to the boundary of Babocomari.

Q. Any other grant to your knowledge lying between these two?

A. No, sir; not that I know of.

Q. And how far does the Babocomari grant reach towards the east as compared with the San Rafael grant taken by you?

A. The Babocomari grant would reach from that point about three or four miles from the north center monument towards the east in a line running from the north center monument to the northeast monument.

Q. Is the eastern extremity of the Babocomari grant east or west of the northeast corner of the San Rafael grant?

A. Northeast I should think.

Q. And the western extremity would be east or west of the north center monument?

A. It would be northwest.

Q. Would it be east or west of the northwest corner of the San Rafael grant?

A. It would be north or northeast.

Q. Examine that paper and state what it is?

A. That is a sketch of the relative positions of the San Rafael de la Zanja grant, which is shown in black lines, and the town lands of Santa Cruz, shown in green lines; the full green lines include the town

216 lands of Santa Cruz as per the Quijano survey; the dotted lines running from the east monument of the town lands of Santa Cruz, situated at what is known as Durazno pass, towards the northeast, ends upon the southeast corner of the San Rafael de la Zanja grant, known to me as the ancient northeast corner of the town lands of Santa Cruz.

Q. Who made this sketch?

A. I made it myself.

Q. From what data?

A. From my own survey and from the data furnished by the Quijano survey.

Q. Does this correctly represent the exact location relatively of the San Rafael de la Zanja grant and the town lands of Santa Cruz grant?

A. It does from my best knowledge and belief.

Q. What grant, if any, lies immediately to the east of the eastern line of the town lands of Santa Cruz, as shown by the dotted line running from the southeast corner of the San Rafael de la Zanja grant and running down to the southeast corner of the town lands of Santa Cruz grant?

A. To the east of these lines is what is known as the Cienega de la Deheridia grant.

Q. Did you ever survey that grant?

A. I have. I was going to say that the western boundary of the Cienega de la Deheridia grant proper does not reach that boundary, but there was a concession given by the Government of Mexico to Colonel Lauro Carrillo, of Chihuahua, upon the demasias that fell in the Cienega de Heredia, and between that grant and the presidio lands of Santa Cruz.

Q. Did you survey that concession?

A. I surveyed that concession.

Q. In what capacity?

A. I had an appointment from the Federal Government to make the survey for the district of the State of Sonora.

Q. And when did you make that survey?

A. I made that survey in 1888.

Q. In making that survey, what, if anything, did you do with
217 reference to guarding against encroachments on the Santa Cruz town lands?

A. I complied with the instructions given me to summon the owners of adjoining lands, and I summoned them by commanding the local authorities of Santa Cruz to commission men to point out to me the boundaries of the town lands.

Q. Did they point out to you any monument of the town lands of Santa Cruz?

A. They pointed out to me a monument which is on the southern extremity of the highest point of the Santa Cruz monument known as the Chivato monument; from there they told me the boundary line ran over the range of mountains, or a depression in these mountains called Durazno Pass, of which I have spoken before; from there they told me the boundary of the town lands went to the monument at the Jaralito, this last monument being the southeast corner of the San Rafael de la Zanja grant and what used to be the ancient northeast corner of the town lands of Santa Cruz.

Q. That is the same monument taken by you as the southeast corner of the San Rafael de la Zanja grant?

A. Yes, sir; the Puerto de la Durazno range of hills or mountains are in the direction of that dotted line approximately, and that range of hills is known as the Juanate Hills.

Q. What do the ancient documents of the town lands of Santa Cruz say as to that range of hills, if anything?

A. All the proceedings of the survey of the town lands of Santa Cruz that I know of are dated back to 1742, and in the survey they ran from the town church at Santa Cruz at right angles to the valley towards the bed of the river; from there they measured to the north a certain number of cords, what I do not remember, to a point near the spring in the valley, which is in the valley of the Santa Cruz; from there they ran south; I remember particularly that after measuring the town
218 lands the surveyor inquired if they were satisfied with the lands that he had surveyed for them, and they said they were provided they would give them as the boundaries the chains of mountains to the east and to the west, and he so declared and he established these as the boundaries.

Q. Is there a range of mountains on the east and on the west, and if so, how do these ranges run?

A. The range on the west is known as the San Antonio, also Santa Barbara range of mountains, and they run approximately as that green line running from the point of the—south of the San Antonio Pass towards the southeast, or that entering angle which is at a point known as the Puerto de la Tambor; I mark that entering angle with the capital letter A.

Q. How about the range on the east?

A. The range on the east, that range does not end at this pass called El Tambor, but it bears towards the southeast and ends where the Santa Cruz River makes a turn to the west and then to the south.

Q. Will you delineate approximately where the Santa Cruz River runs on that map in the Santa Cruz lands and the San Rafael also; show the direction of the river a little further outside of the lands?

A. Marked by the words Santa Cruz River.

Q. Will you place a letter B about at the point where the north of that range runs on the west side of the town lands of Santa Cruz ends approximately on the south end; make some dots from the corner to the letter B indicating about the direction of the mountains and about the range of mountains on the east side?

A. Marked by the letter B. The range of mountains on the east side runs in the direction of the letter C, marked C, D, E.

Q. What is the general character of the country from the point indicated on that map as the beginning of the Santa Cruz River and
219 running south and following the course of that river along to where it starts northwest?

A. In the beginning of this line representing the river it is mesa country, rolling hills, to a point about two or three miles south of the north center monument of the Santa Cruz lands, which is the south center of the San Rafael de la Zanja; from a point about a mile south of the town of Santa Cruz the valley narrows very much, forming what is known as the Cajon de San Lazaron, which is a narrow canon; that canon goes as far as the place called San Lazaro, where the valley widens considerable and runs directly west to the point known as Los de Divisenos, where the river turns to the north and northwest.

(We offer this map in evidence, plaintiff's Exhibit F 46.)

Q. What does the red dotted line on this map represent?

A. The red dotted line represents the international boundary line.

Q. Is that an approximately correct representation of the two grants represented here?

A. Yes, sir.

Q. And what does that black line from F to E represent?

A. That is a broken line marking the ancient north boundary of the town lands of Santa Cruz and the south boundary of the San Rafael de la Zanja grant.

Q. Turn to the original title papers of the San Rafael de la Zanja grant and read what it says about the number of sitios and the character of those sitios as appraised, and also what it says in the petition for the purchase of the lands as to the purposes or use to which they were to be put.

A. In the petition of Don Manuel Bustilla for these lands he states that he has a large number of stock, both cattle and horses, and that he needs a place to keep them, and for that purpose he petitions for three sitios out of the boundaries of the town lands of Santa Cruz, and one sitio more for an estancia.

Q. What does he say about the proper valuation of the land, if anything?

220 A. He asks that when the commissioner is appointed to make the survey he begs that he bear in mind in making the corresponding appraisement that the land petitioned for is situated upon the country of the Apaches, which up to that time, when the petition was made, they had not ceased to be hostile.

Q. Now turn to the titulo for the character of the land as it was stated to be by the appraisers?

A. After the survey was concluded the commissioner proceeded to the appointment of proper persons to make the appraisement and to take the oath for the proper compliance of their commission, and the said commandant proceeded to the corresponding appraisement by means of intelligent experts, who were Don Alejo and Tomas Ganna, who, being sworn in due form of law, they did so, according to the knowledge or acquaintance they had of all the land, and in accordance with the superior regulations bearing upon the matter, giving the value of sixty dollars to each one of the three sitios which contained permanent water, and that of thirty dollars to the remaining one on account of its being only susceptible of producing water by means of wells.

Q. Now, turn to the offer of sale and state what was said by the crier, if anything, as to the character of the land.

A. The first offer of sale took place at the presidio of Santa Cruz on the said day, month, and year. I, the said commissioner, caused a large number of persons to be summoned or called at the beat of the drum to the public plaza of this place, and in the presence of all of those that appeared Juan Antonio Rodriguez should say, who acted as crier, in a high and clear voice, the lands of the place known as San Rafael de la Zanja, situated in this jurisdiction, and containing four sitios for the raising of large stock, surveyed in favor of Don Manuel Bustilla, resident of this place, appraised in two hundred and ten dollars, are
221 to be sold on account of the royal treasury; whoever wishes to bid must appear to make such bid before me, and there being no

bidders, the fact was entered in the minutes, which I signed, with my attending witness, according to law.

Q. Now translate from that document the report of the prómoter fiscal made upon these proceedings and pregones?

A. The attorney-general of this intendencia has seen with all care the proceedings relative to the lands surveyed in favor of Don Manuel Bustilla, a resident of the presidio of Santa Cruz by the commissioner, Don Simon Elias y Gonzales, captain and commandant of said place, at the place San Rafael de la Zanja, in that same jurisdiction, from which there resulted four sitios for the raising of large stock, cattle and horses, and which were valued by two experts appointed for that purpose, at the rate of sixty dollars each for three of them, on account of having running water, and the fourth on account of lacking this and only can be susceptible of having water by means of wells in thirty dollars, which two sums make a total of two hundred and ten dollars, and having been offered to the public for thirty consecutive days, no bidders resulting; in the next place the three investigations or informations customary were received from which it is proved that the said party in interest, Bustilla, owned or had sufficient means to keep settled and protected the said land, therefore, I ask that if you consider it proper you order the holding or celebration of the three public officers to sell at this capital, summoning bidders and selling the land to the highest and best of them, notifying them that they must pay at this national treasury the total value of the lands * * * issuing to him the necessary certificate that will testify said payment, which certificate must be added to this report of
222 proceedings so as to submit it to the superior board of the treasury for the resolution it may deem proper to render in the matter, notwithstanding this, my opinion is subordinate to yours, you may determine what may seem best to you. Arizpe, December 20, 1821, Francisco Perez.

Q. Now translate the first auction of the final sale, the first offer of sale?

A. In the city of Arizpe, on the 8th day of the month of January, 1822, summoning as a board of sales in his name, pro tem, as president of the board and the members which made it up for the purpose of celebrating the first offer relative to the lands to which these proceedings refer, they caused, or they ordered that at the beat of the drum there should be summoned at the office of this intendencia many persons, and that in their presence they should proceed, the crier, to make offer in a high and clear voice saying there are going to be sold by this board of sales four sitios of public land for the raising of large stock contained in the place called San Rafael de la Zanja situated in the jurisdiction of the presidio of Santa Cruz, surveyed and measured in favor of the denouncer Don Manuel Bustilla and appraised in two hundred and ten dollars at the rate of sixty dollars each for three of said sitios and the remaining one in thirty dollars; whoever wishes to bid for the aforesaid public land may now come forward and make his bid before this board, which bid in due form will be admitted with the understanding that on the third and last offer of sale which must be done by to-day; after to-morrow the sale must be made in favor of the highest bidder, whereupon Don Manuel Romero appeared and for himself and in the name of the people or residents of

the said military post of Santa Cruz he made the bid of ten dollars more than the said appraisement which was easily outbidden by Don Manuel Bustilla, who also was present, whereupon they bid alternately one and the other, the last bid amounting to the sum of twelve hundred dollars made by Don Ramon Romero, and it being the hour of prayer, of twelve o'clock of this day, without there appearing a higher bidder, these proceedings were ended and is entered in the minutes. In witness whereof, signed by the president and members of this board of sales, signed, Bustilla, Escalante, Fuentes, Perez.

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Q. Do you know whether Ramon Romero had any office in Santa Cruz at that time?

A. I do not remember.

Q. Have you ever surveyed the San Rafael grant, running 100 cordels from the place you have taken as the center of the grant, from the center monument, towards each of the cardinal points?

A. Yes, sir.

Q. At the end of 100 cordels running to the north or anywhere in that vicinity did you find any arroyo running towards the Penasco in the direction of a red hill?

A. No, sir; I do not remember that there was any such arroyo any place in that vicinity that would answer at all the calls of the expediente from the north center monument; the water runs from the north and northwest in that vicinity; they do not run towards the Penasco.

Q. Did you find at 100 cordels towards the east any place, east of the center monument as taken by you, that would answer the calls of the expediente anywhere in that vicinity?

A. No, sir; none that would answer the calls; one hundred cordels would bring you to the mouth of the Canada del Potrero, where it comes into the Santa Cruz River.

Q. Did you find any old ruins at a distance of 100 cordels north from the point where the Canada del Potrero opens into the Santa Cruz Valley?

A. No, sir.

Q. Or anywhere in that vicinity?

A. No, sir.

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Q. Did you find 100 cordels west of the place taken by you as the center monument or in that vicinity any El Caloso or lime hill?

A. No, sir; that caloso would be very far to the west.

Q. How many miles, approximately?

A. Perhaps six miles.

Q. What is the character of the country towards the west 100 cordels?

A. Mesa country.

Q. From the place taken by you as the center did you survey 200 cordels towards the north?

A. No, sir.

Q. Did you make a reconnoissance?

A. I did.

Q. To a point 200 cordels north?

A. Yes, sir.

Q. In going to that point did you find any water in that vicinity?

A. No, sir.

Q. Did you find any arroyo that ran towards the Penasco in the direction of the red mountain?

A. No, sir.

Q. Did you find one that ran towards the Saddle Mountain?

A. No, sir.

Q. Did you find any place in that vicinity or anywhere there that would answer the calls of this expediente from the north center monument?

A. No, sir.

Q. Did you make a reconnoissance to a distance of 200 cordels from the center of the grant as taken by you towards the east?

A. I did.

Q. In going that distance and to that point did you come to the Canada del Potrero?

A. No, sir.

Q. Were you in the immediate vicinity of the Canada del Potrero when you reached the end of the 200 cordels?

A. When I was quite a ways off.

Q. Quite a way to the west of the Canada del Potrero?

A. Yes, sir.

Q. Did you find any point there that would answer to the calls of the expediente?

A. No, sir; I did not look for any.

Q. Did you make a reconnoissance from the place taken by you as the center monument of the San Rafael grant running towards the
225 south for 200 cordels?

A. I did.

Q. Did that bring you to the point where the Canada del Potrero runs into the valley of the Santa Cruz?

A. Very close to it.

Q. How close?

A. I think it brought me to the mouth. The mouth of that canada is very broad, very wide. I think I came just to the upper part of it.

Q. Your map shows the exact distance, does it, to the place taken by you as the north center monument?

A. Yes, sir.

Q. Do you know the distance in cordels?

A. I think I can give it to you in feet and leagues, but not in cordels.

Q. It is approximately 200 cordels from the center—south of the center?

A. It is a little over 200 cordels.

Q. Have you made a reconnoissance from the point taken by you as the center monument for a distance of 200 cordels towards the west?

A. Yes, sir.

Q. In going that distance or at the end of it did you find any caloso or lime hill?

A. The El Calos was to the west.

Q. Then you did not find any in going that distance?

A. No, sir.

Q. Was there any point going 200 cordels or at the end of it that would answer the calls of the expediente?

A. No, sir.

Q. You say you have surveyed exactly 100 cordels north, south, east, and west from the center monument as taken by you?

A. Yes, sir.

Q. Platting that into four quarters, so that there would be one sitio in each quarter, upon how many of these sitios did you find permanent running water?

A. There would be water on two of them. There would be water on the northwest and southeast.

Q. In this map which we put in evidence—plaintiffs' Exhibit
226 F 25—do these trunk-like representations with branches representing water courses, do these water courses carry water?

A. No, sir; they are dry.

Q. You say you found permanent running water on the southeast and northwest?

A. Yes, sir.

Q. How about the other two?

A. They would be dry.

Q. Have you made a reconnoissance of the tract that would be included within a square connecting the cardinal points at a distance of 200 cordels from the center as taken by you?

A. Just a reconnoissance; not an exact measurement.

Q. Can you state, if such a square is divided into four equal quarters by lines running from the center to the side lines, upon how many of these quarters would you find running and permanent water?

A. Upon two of them.

Q. Upon no more?

A. No, sir.

Q. Upon this map made by George J. Roskruge, April, 1887, which is before you, about where does the water rise that runs through the Canada del Potrero?

A. I could not tell for certain. I did not make any composite examination as to that. I think it is quite high up.

Q. Is there water running all the time in the Canada del Potrero?

A. No, sir.

Q. About where on your map which is in evidence here, marked Plaintiffs' Exhibit F 25—about where does the water commence in the Canada del Potrero? Mark it from north to south. I mean at the farthest northern extremity at which the water commences.

A. I could not say. It commences there at the Camelo Hills, I think, and runs down to the point perhaps a couple of miles southwest of the east center monument.

Q. Does it commence at a point north of the center monument as taken by you?

A. North or northwest of the east center monument.

227 Q. At what distance—how far west of the east center monument does that water commence?

A. Perhaps three-quarters of a mile or a mile.

Q. Do you know or have you made a sufficient reconnoissance of the land contained in this grant to state whether if the tract of land as surveyed by you is cut into four equal quarters, or about equal quarters, by

lines containing the north center monument, east center monument, west center monument, and the south center monument, with the center monument as taken by you, in how many of these quarters there would be running and permanent water?

A. In three of these quarters. I do not think there would be any permanent running water in the southwest quarter.

Q. Where do you find the first running and permanent water in the quarter of the tract of land, as surveyed by you, which might be called the northeast quarter in going from the center monument?

A. At a point indicated by the letter A on plaintiffs' Exhibit F 25, after crossing where it reads Canelo Hills, somewhere in these valleys running towards the north.

Q. Now, where would the first permanent and running water be in the northwest quarter of the tract of land as surveyed by you?

A. I think it would be in the neighborhood of Harshaw.

Q. And whereabouts would that be with reference to the Saddle Mountain and the penasco?

A. I think it would be west or southwest of the Saddle Mountain and the penasco.

Q. About how far south, if any, of the Saddle Mountain?

A. Maybe half a mile.

Q. And how near would that be to the west center monument, as taken by you, where that first water is? How near the *the* west boundary line?

A. That would be perhaps a mile and a half; about a mile and
228 a half to the east of the west boundary line.

Q. Where would you find any permanent running water in the southeast quarter of the tract of land as surveyed by you; about where, in going from the center monument?

A. There would be running water south of the center monument, in the Santa Cruz River.

Q. Does the Santa Cruz River fall in the southeast quarter?

A. I know it does. The direction of these water courses is not exact. I never meandered there.

Q. Did you find permanent and running water at other places in that quarter?

A. Yes, sir; running water in the Potrero Gulch and in the Jaralito.

Q. Did you find permanent and running water in the southwest quarter of the tract of land as surveyed by you?

A. Not that I remember of. I know there is water in the San Antonio Pass in the rainy season and during the winter, but in the dry season there I know that there is no water there.

Q. What quantity of water did you find in the northwest quarter of the tract of land as surveyed by you, and where did you find it; at what places?

A. Considerable; but I never took any measurements as to the amount of water. There is a good deal of water near Harshaw and near Cottonwood Wells.

Q. And what quantity of water and at what places did you find water in the northeast quarter of the tract of land as surveyed by you?

A. There is water in the Coches Valley. There are marshes there.

Q. Where is the Coches Valley with reference to the Canely Hills?

A. To the northeast.

Q. Did you find any water in the Canelo Hills in the northeast quarter.

A. No, sir.

229 Q. What quantity of water is there in the Carricillo Spring?

A. There is a good deal of water there; Mr. Igo has a reservoir there and has a very beautiful pond.

Q. The place described on your map as Lochiel, originally called La Noria—what does the word "noria" mean?

A. It means the well.

Q. And what was at the place called La Noria; was there a town there or anything of that sort?

A. A little town there, I believe; a few houses; some houses.

Q. Do you know how long there has been houses there?

A. No, sir.

Q. And do you know as to whether there is a well there?

A. I have seen several wells there.

Q. But it means well?

A. Yes, sir.

Q. In the southwest quarter of the tract as surveyed by you is the place known as La Noria?

A. Yes, sir.

Q. The quarter described by you as the dry quarter?

A. Yes, sir.

Q. You state that there was water on two of the quarters secured by measuring one league towards each cardinal point, I believe?

A. Yes, sir.

Q. The water of the Santa Cruz River runs down and divides the southeast and southwest quarters?

A. Yes, sir.

Q. The Santa Cruz River is all to the east of a line running from the center monument to the south center monument?

A. Yes, sir.

Q. Was this map made by you, which is plaintiffs' Exhibit F 25, before or after you made measurements of 100 cordels from the center of the grant as taken by you toward each cardinal point?

A. This map was made before that time.

Q. From your examination of the ground at the time of the making of your measurements of 100 cordels, does that map correctly

230 delineate the conditions of the Santa Cruz River as compared with your red line from your center monument to the south center monument of the grant?

A. Very approximately so.

Q. And on that map where does the Santa Cruz River cross to the west of the line running from the center monument to the south center monument?

A. At no point.

Q. My question is: Would a line run to the west as delineated on this map of yours at any place cross the river between the center monument and the south center monument, a straight line connecting the two?

A. A straight line connecting the two would leave all the river to the

east, except immediately after beginning from the center monument, and then it crosses the river to the west at a point very close to the south center monument.

Q. How close?

A. Perhaps a quarter of a mile or something like that.

Q. Then this map shows it as being to the west or southwest a line a little more than it should be, does it?

A. Yes, sir; the river at that point where it runs from the center monument to the south center monument should be delineated a little further east, I think.

Q. When was the first time you went on this grant to make a reconnoissance of it; what year?

A. I think in 1895 I made this survey.

Q. When was the first time that you saw permanent running water on this grant at any point within the northwest quarter, or northwest sitio, the four sitios measured in a square from the central point taken by you, measured toward each cardinal point 100 cordels?

A. I am sure I do not remember when I saw water there.

Q. Did you see any water there prior to 1895 at any time?

A. At the place called La Zanja.

Q. Were you ever there prior to 1895?

231 A. I do not remember that I was there prior to 1895.

Q. Is there any permanent running water in the Santa Cruz River between the center, taken by you, and the point where the line running from the center monument to the south center monument crosses the river bed?

A. No, sir; it is dry.

Q. Then there would be no running water in that southwest quarter at that center monument in the Santa Cruz River from the place where the bed of the river crosses into that southwest quarter, to where your line first crosses it, running to the south center monument?

A. No, sir; except this 'hort distance of a quarter of a mile, where the Santa Cruz River crosses.

Q. Is there any permanent running water there?

A. At least I do not remember to have seen any there.

Q. Do you know whether the monument taken by you as the northeast monument is the same object taken by Mr. Roskruge in that map?

A. I understand it is the same monument.

Q. Do you know whether the object taken by you as the north center monument is the same as that taken by Mr. Roskruge?

A. Yes, sir; that is the same.

Q. Do you know whether the object taken by you for the northwest monument is the same as that taken by Mr. Roskruge?

A. I believe it is not. Mr. Roskruge has located that close to the road going south to Harshaw and Crittenden.

Q. Do you know where this object is, taken by Mr. Roskruge?

A. I have never been to that place.

Q. This red hill taken by you—can that be seen from the vicinity of the north center monument, looking down here in the direction of the arroyo that runs towards the Penasco?

232 A. Yes, sir; the summit of that hill can be seen from there?

Q. Can any other red hill be seen from there?

A. No, sir.

Q. What part of that red mountain did you take as the point?

A. I took a point as near as possible in a direct line from the north center monument to the summit of this red mountain, and I established a point at the foot of what they considered the mountain.

Q. Can that summit be seen from the vicinity of the north center monument and looking down and beyond the Penasco in that arroyo there?

A. Yes, sir.

Q. Do you know whether or not the natural object on the ground taken by you for the west center monument is the same hill taken by Mr. Roskruge?

A. I do not know for certain; I think it is the same.

Q. Do you know whether or not the object taken by you on the ground for the southwest monument is the same object as taken by Mr. Roskruge?

A. I know it is the same.

Q. Do you know whether or not the object taken by you on the ground for the south center monument is the same taken by Mr. Roskruge?

A. I know it is the same.

Q. How do you account for the difference in the directions of the lines made by you in your map and this map of Mr. Roskruge, between the south center monument and the southwest monument?

A. The difference is so slight that a hundred engineers would come just about as near; it is a matter that rises out of their measurements and calculations in their method of making the survey, and that accounts for it.

Q. Do you know what these squares in this map represent?

A. I think they represent square miles; they are just exactly miles—square miles.

Q. Then, as indicated on that map, the difference between the
233 north center monument, as located by you and as located by Mr. Roskruge, is about how much, approximately?

A. About a quarter of a mile.

Q. And this at El Caloso, at the west center monument, the difference is about how much?

A. About a quarter or an eighth of a mile.

Q. And at the southwest monument?

A. They are about the same; very insignificent.

Q. And the south center monument?

A. Insignificnt.

Q. At the east center monument?

A. About a third of a mile.

Q. And at the northeast monument?

A. Perhaps an eighth of a mile.

Q. Will you please give us a few more examples of grants surveyed by you in Sonora, where you resurveyed, and made by you officially for the purpose of passing the title to the demasias? Confine your testimony to the difference in quantity between the amount called for in the title papers and the quantity as confirmed to the owner under the resurvey.

(The same objection entered to all this line of examination as immaterial, irrelevant, and incompetent and having no bearing on this controversy.)

A. I find in one of my books the resurvey of the lands belonging to the Sociedad de Ymunis. This survey was made in 1885. The calculations I have not in this notebook. I know there was a considerable excess of area titled in favor of the owners of the grant.

Q. Will you make up a list?

A. Yes, sir.

Cross-examination by Mr. POPE:

Q. You were, I believe, not on this survey of Mr. Roskruge?

A. No, sir.

Q. Do you know what year the survey of Mr. Roskruge was made?

A. No, sir.

Q. Do you know whether he made one or more than one survey?

A. No, sir.

Q. You were there the first time in 1895?

A. Yes, sir.

234 Q. In making this survey?

A. Yes, sir.

Q. Can you state, then, why this north center monument which you have taken is the same as Mr. Roskruge took?

A. By information people told me that he had taken the same monument.

Q. Is that the only source of your information?

A. Yes, sir.

Q. I wish you would look at this map and state what the course is according to Mr. Roskruge on that map from your northeast corner to your north center monument.

A. South 87 degrees 30′ west.

Q. And what is your course?

A. South 89 degrees 20′ 53″ east.

Q. What is the number of miles that Mr. Roskruge has from the north center monument to the northeast monument?

A. 9 miles, 8 chains.

Q. Have you figured out how much that is in feet?

A. No, sir; I have not.

Q. If both points were the same and both surveys were accurately made, then these points ought to coincide?

A. That would depend on many considerations.

Q. What considerations?

A. Upon the manner in which the survey was made; upon the care with which it was made.

Q. I say if both surveys were correctly made in every particular they should coincide?

A. No, sir; you could not make a survey by triangulation and take every precaution to prevent errors and then make a survey of the same points by chaining and obtain the same results.

Q. Suppose both were correctly and accurately made?

A. Then they should not coincide.

Q. You say you survey by triangulation?

A. Yes, sir.

Q. You do not know how Mr. Roskruge made his?

A. No, sir.

Q. Which is the more accurate method, by triangulation or by actual measurement?

A. I think by triangulation.

235 Q. The course from the north center monument to your northwest corner; what is that course?

A. It is north 65 degrees 27′ and 42″.

Q. And the distance?

A. 40,805 feet.

Q. Mr. Roskruge's course and distance is what?

A. It is south 80 degrees 15′ west; distance, 6 miles 79 chains.

Q. Mr. Roskruge's north center monument is south and east of your north center monument?

A. Yes, sir.

Q. And his northwest corner is north and east of your northwest corner?

A. Yes, sir.

Q. What is the distance from your northwest corner to his?

A. About a mile and five-eighths.

Q. What is the difference between your northwest corner and your west center monument?

A. Mr. Roskruge's course and distance from the northwest corner to the west center monument is south 11 miles and 30 chains. The course of my line is from the northwest corner to the west center north 2 degrees 32′ 18″ west; my distance is 52,540.5 feet.

Q. That is, from your northwest corner to the west center monument?

A. Yes, sir.

Q. Now, as to his bearing from his west center monument to his southwest corner; what is his course and distance?

A. South 4 degrees 30′ east; 3 miles and 10 chains.

Q. And what is yours?

A. North 7 degrees 47′ 45″ west; distance, 18,442.4 feet.

Q. Now, what is your direction of your location of the northeast corner of the presidio lands of Santa Cruz from your south center monument, and the distance?

A. North 86 degrees 39′ 45″ west; distance is 31,929.8 feet.

Q. Is that your bearing?

A. Yes, sir.

236 Q. Now, what is Mr. Roskruge's bearings between these two points?

A. South 86 degrees 40′ east; distance, 6 miles.

Q. Now, his bearing from the south center monument to the northeast monument of the presidio lands of Santa Cruz?

A. North 84 degrees 10′ east; distance, 4 miles 6 chains.

Q. And your bearing and sistance?

A. I have not figured that.

Q. What is yours from the south center monument of the San Rafael de la Zanja to the southeast corner of the San Rafael de la Zanja of your survey?

A. North 89 degrees 20′ 31″ west; distance, 40,685.2 feet.

Q. I wish you would scale on that map the distance from the northeast corner of the presidio lands of Santa Cruz, as located by Mr. Roskruge, and the same points as located by you.

A. A little over 3 miles and a half.

Q. Does Mr. Roskruge indicate on that map where the southeast corner of the San Rafael de la Zanja grant is as located by him?

A. Yes, sir; he has got the southeast corner marked by dotted lines.

Q. He has got that designated as the southeast corner monument of the presidio lands of Santa Cruz?

A. Yes, sir.

Q. That is a different point from the one which you have laid down there as the northeast corner of the presidio lands of Santa Cruz?

A. Also different.

Q. What is the distance from his southeast corner monument to the northeast monument of the presidio lands of Santa Cruz, which is located by you as the southeast corner of this grant?

A. It is about 1 mile.

Q. What is the direction of that southeast corner of Mr. Roskruge from your southeast corner?

A. Generally speaking, about south 12 degrees 30′ west.

237 Q. Does his line connecting the southeast corner with his east center monument coincide with your line connecting your southeast monument with your east center monument?

A. No, sir.

Q. What is his bearing from the northeast monument of the presidio lands to his east center monument?

A. North 35 degrees east; distance, 8 miles and 10 chains.

Q. What is your course and distance from the east center monument to the northeast monument?

A. It is south 1 degree 3′ 34″ west; distance, 51,864 feet.

Q. What is your course and distance from the east center monument to the northeast corner monument of the presidio lands of Santa Cruz?

A. It is south 12 degrees 26′ 10″ west; distance, 38,513.6 feet.

Q. How far is your east center monument from Mr. Roskruge's?

A. About three-eighths of a mile.

Q. Your east center monument being different, your course from the east center monument to the northeast corner monument is consequently different also?

A. Yes, sir.

Q. What is the difference between these two courses—his course and yours?

A. His course from the east center monument to the northeast corner is north 2 degrees 40′ east, and the course of my survey is north 1 degree 3′ 34″ west.

Q. When was this survey of Mr. Quijano made to which you have testified?

A. I do not know for certain, but I think it was made somewhere in 1887 or 1888. I do not remember; maybe 1889. I do not know for certain; I do not remember.

Q. For what purpose was it made?

A. It was made for the purpose of partitioning the town lands.

Q. Allotting them?

A. Yes, sir.

238 Q. Under what law of Mexico?

A. Under laws and regulations issued by the department of public works. I mean under regulations by the department of public works in Mexico.

Q. I believe that you said you saw certain ruins located in the valley of the Santa Cruz about a mile north of the international boundary line, did you, or a mile, or what did you say?

A. The distance I do not remember. I do not remember what distance I gave at the time; it is in the record. The distance is in the record.

Q. In which record?

A. In the record here.

Q. Do you recall now what the distance was you gave?

A. No, sir.

Q. Was it as much as ten miles?

A. I think it is less than that.

Q. As much as five miles?

A. Less than that yet.

Q. Do you recall what you testified about this?

A. Yes, sir; I do not remember about the distance.

Q. Was it as much as two miles?

A. I think so. I think it was, more or less, perhaps that much.

Q. How far is it from the south center monument of this grant, at the mouth of the Potrero Canada, to the international boundary line?

A. From the south center monument to the international monument number 111 the distance is 5,705 feet.

Q. A little over a mile?

A. Yes, sir.

Q. In a straight line, then, from these ruins to the south center monument of this grant, as identified by you, what is the distance?

A. You just asked that question before and I told you I did not remember.

Q. You said it was two miles?

A. Yes, sir.

Q. Is it as much as three miles?

A. I do not know.

Q. What is your judgment?

A. It may be between 2 and 3 miles.

Q. What is a hundred cords?

A. Two and six-tenths miles.

239 Q. The distance from these ruins is about one hundred cords to the south center monument as indentified by you?

A. Yes, sir; about that.

Q. I believe you stated that you made your first reconnoissance of this tract in 1895?

A. Yes, sir.

Q. When did you make any subsequent reconnoissance, or did you make a subsequent reconnoissance?

A. I did for the purpose of ascertaining whether the water in the Santa Cruz River or anywhere else would come inside of one section in there.
Q. Did you make any other reconnoissances besides these two?
A. No, sir.
Q. That was the purpose of your second one, was it?
A. Yes, sir.
Q. Was that your only purpose?
A. That was the only purpose I had at the time; yes, sir.
Q. What time were you there in 1895—what time of the year?
A. That was in September.
Q. At the time you made this survey?
A. Yes, sir.
Q. What time were you there when you made this other investigation?
A. I think I was there last December.
Q. December is one of the driest portions of the year, is it not, in this country there?
A. No, sir.
Q. When do the rains commence in this country?
A. The rains commence in this country, some time it rains in June, the last, until September about, and then again it commences raining in October and rains in November and December.
Q. Your regular rains, however, is in June to September?
A. Some seasons.
Q. This is the reliable rainy season?
A. I think it is very reliable in the winter too; it generally rains in the winter here.
Q. It is more reliable in the months of June to September?
A. Heavy rains; yes, sir.
240 Q. Where did you go on the second reconnoissance that you spoke of?
A. I went to the center monument.
Q. Where did you go from there?
A. I ran a line from the center monument to the south center monument.
Q. Where else did you go?
A. I went from there to the north.
Q. How far?
A. A league, or 2.6 miles.
Q. How many times did you cross the river going there?
A. I do not think I crossed it a single time; I came close to the river.
Q. Which side of that line was the river?
A. To the west.
Q Did you cross it going south from the center monument?
A. I did.
Q. How many times?
A. Once.
Q. Your center is on the east side of the river?
A. Yes, sir.
Q. And your south center monument is on the east side of the river?
A. It is on the east side of the river also.
Q. Did you cross it in any other points?

A. No, sir.

Q. I believe you testified that the Santa Cruz River on this map is approximately correct?

A. Yes, sir.

Q. Suppose you draw a line due south from your center monument to the south boundary line, would that fall to the west of the river?

A. Part of it.

Q. If you draw a line south from your center monument, part of the river would still be in that section?

A. A part of the river would be dry.

Q. I did not ask you that; don't volunteer.

A. That would include a part of the river.

Q. A part of the river that is dry?

A. Yes, sir; I crossed on a dry bed of the river.

Q. You are certain it is dry now, are you?

241 A. It was dry when I crossed it in December.

Q. You are certain of that?

A. It was dry; yes, sir.

Q. Perfectly dry?

A. Yes, sir.

Q. Where did you go after measuring from the center monument to the north center monument?

A. I ran along to the west; ran a line to the west.

Q. How far did you go to the west?

A. One league.

Q. How far did you measure to the east?

A. One league.

Q. What did you do then?

A. I went on horseback further when I made this measurement; I went on horseback what I consider about a league more east.

Q. Where did you go then?

A. I went back to camp.

Q. Where did you go then?

A. I was back in camp.

Q. Your information, then, about these outlying water sources—where was that derived?

A. Personal investigations and from inquiry.

Q. You have testified as to water sources in other parts outside of these 16 sitios; did you on that occasion go to these water sources?

A. No, sir; not on that particular occasion.

Q. Your testimony as to there being water sources at other places is based on what?

A. On personal experience.

Q. You have been to these places and seen these water courses?

A. Yes, sir.

Q. Where?

A. In the Coches Valley and Igo Spring and in the Potrero Canada and in the red rock country and around Harshaw.

Q. How far are these water sources in the red rock country from Harshaw?

A. I could not tell you.

Q. Well, about?

A. It would be several miles.

Q. How far is this water in the pig canon from Mr. Igo's place?

242 A. Perhaps three or four miles; I do not know for certain; the Coches Canon may be five miles.

Q. How far is this water of the Potrero Canada from the water in either of these other places you have testified to?

A. I could not tell you as to the distance.

Q. Well, approximately?

A. It is 6 to 8 miles, perhaps.

Q. Water running in this Potrero Canada, was there?

A. Yes, sir.

Q. Where does it start to run in that canada?

A. About the south end of the Canelo Range.

Q. Where does it run to?

A. It runs to the south and southwest.

Q. How much land in a sitio in acres?

A. 4,338.5.

Q. What is the figure of a sitio?

A. It is a square of five thousand varas, or one league.

Q. Within these outboundaries that you have mentioned could there be more than four sitios laid off with permanent water in them?

A. Yes, sir; I think so.

Q. You have enumerated some 6 or 8 water sources, have you not?

A. I do not know as to how many I have enumerated.

Q. Well, now, enumerate them again.

A. The water in the Santa Cruz River, water in the Potrero Canada, of the water around Harshaw, of the water in the red rock country, of the water in the Coches Valley, the water at Igo Spring; also water in the Jaralito.

Q. These are all within these exterior boundaries that you have described here?

A. Yes, sir.

Q. Would a sitio de ganado be included in each one of these 7 or 8 places having permanent water on it?

A. Yes, sir.

Q. Which did you say were the wet sitios measured 100 cordels in each direction from the center monument?

243 A. The southeast and the northwest.

Q. Don't you know as a matter of fact that in this western country springs that existed in former years have dried up and disappeared and that there are no springs there now?

A. I have heard of such cases; yes, sir.

Q. Is it not a fact that the canada which runs through the town of Nogales right by your place formerly had water running in it?

A. It has water now.

Q. Permanent water?

A. Yes, sir.

Q. It did not have a month ago?

A. I think it had.

Q. Is it not true that there was permanent running water there and that there has been no permanent water there for some time?

A. I think that there was in the lower part of the creek.

Q. There was running water there?

A. I think there is some running water yet; the water diminishes in dry seasons.

Q. The presence of cattle in a country used as a range has some effect on the springs?

A. I understand it has.

Q. Springs that formerly existed are stamped out in some instances and disappeared?

A. Yes, sir.

Q. Did you see any springs near Mr. Igo's and further east?

A. Yes, sir; I think there is another spring east from Mr. Igo's.

Q. How far are they from Mr. Igo's?

A. I did not measure the distance, but it may be half a mile.

Q. Where is this water at the Jaralito that you spoke of?

A. The water that I spoke of at the Jaralito is to the east of the house built on the La Bota ranch by Mr. Guerrin.

Q. Where does this water in the Potrero Canada or Parker's Canon have its origin?

244 A. I think the source is about south of the end of the Canalo Range.

Q. You did not see that spring?

A. No, sir; I did not.

Q. Are you acquainted with anyone who lives out in that section?

A. No, sir.

Q. Do you know where Mr. Collins lives?

A. No, sir; I believe they call that place Parker's Canon; that is my impression; I know there is water about there.

Q. This Tanner's Pass that you were speaking about this morning, where is that?

A. That is southwest.

Q. And at about what distance?

A. May be 7 miles; I am speaking of Parker's place.

Q. The source of the stream you say you did not go there?

A. No, sir.

Q. What is the distance approximately from Tanner's pass to Parker's Canon?

A. I do not know the distance.

Q. It is out in that general direction, though, is it?

A. Yes, sir.

Redirect examination by Mr. HENEY:

Q. From your experience in surveying have you ever known of a single instance in which surveys were made by different surveyors the lines exactly coincided?

A. No, sir.

Q. Have you ever known of a single survey made by the same surveyor twice of the same tract of country that exactly coincided?

A. No, sir; if he makes different observations each time.

Q. The lines on this map correctly represent the relative positions of the places which were taken as the northeast monument of the Santa

Cruz town lands by the survey of Quijano as compared with the northeast corner as taken by you; do you mean the point is the same point?

A. I mean the location of the relative positions of these two
245 points is not correctly delineated there; I think that the point that has been pointed out to me as the northeast corner of the Presidio lands as at present admitted is further north.

Q. I will show you the sketch and ask you if this map approximately represents the relative positions of the two points I have just named in my previous question?

A. Yes, sir; I think it is.

Q. Have you ever heard of springs starting out fresh any place in this country where there had been no spring prior to the time you saw this happening?

A. Yes, sir; I have known of springs starting out fresh; I know they started soon after the earthquake in 1888.

Q. Have you ever heard of water springs in river beds?

A. Yes, sir; after the earthquake in 1887 and 1888.

Q. Springs in river beds in this country in places where it formerly had not appeared?

A. Yes, sir.

Recross-examination by Mr. POPE:

Q. What did you find the scale of this map to be?

A. About 2 and $\frac{2}{3}$ inches to the mile.

Q. Is that the basis on which you have given these distances in describing this map of Mr. Roskruge?

A. I applied the scale between the points and then I applied the scale marked on the map, and it was 2 and $\frac{2}{3}$ inches to the mile.

Q. I wish you would give me the scale of this map, Plaintiffs' Exhibit F 46?

A. One inch equals ten thousand feet.

COLIN CAMERON recalled by Mr. Heney:

Q. You are the claimant in this San Rafael de la Zanja grant?

A. Yes, sir.

Q. When did you purchase it?

A. 1883.

246 Q. From whom did you purchase it?

A. Mr. R. R. Richardson.

Q. Did you buy it for yourself personally or represent other parties?

A. Myself and other parties.

Q. Who were the other parties?

A. J. D. Cameron; W. C. Whitney; William Brown, editor of the Evening News, of New York; Attorney-General Wayne McVeigh; Mr. Frank Ely, of St. Louis; John Small, and George S. Billings, of York, Pa.; Hon. W. W. Kerr, of Philadelphia, Pa., and some others.

Q. What did you pay Mr. Richardson?

(Objection as irrelevant and immaterial.)

The COURT. You can put it in the record if you want to, although we think it is immaterial.

A. Something over $46,000.00 to Mr. Richardson.

Q. Have you paid any other sums out; if so, how much?
(The same objection to this whole line of examination.)
Q. Other additional sums to what you paid Mr. Richardson?
A. It aggregated over $80,000.00.
Q. Have you paid taxes upon this grant?
A. Yes, sir.
Q. How much?
A. I think we have paid taxes since we have been here something over $25,000.00—between $25,000.00 and $30,000.00.
Q. They were imposed and collected by officials of the county of Pima, in the Territory of Arizona?
A. Yes, sir.
Q. And that was since the year 1882?
A. I paid taxes in 1883.
Q. At the time you purchased from Mr. Richardson did he point out to you any of the monuments of the grant?
A. He did.
Q. What ones?
A. The southwest monument.
Q. Where did he state that was, or show it?
247 A. He took me to the same point that we take for our southwest monument—the northwest monument of the Santa Cruz boundary lands.
Q. Is that the same monument that is represented on this photograph of the southwest monument which Mr. Bonillas testified about, Plaintiffs' Exhibit F 45?
A. The same monument; it is.
Q. You have been upon the ground and compared that photograph with the monument, have you?
A. Many times.
Q. How did he show you that monument?
A. We went there on horseback from San Rafael.
Q. Did you have the title papers with you?
A. I had a translation made by Mr. Hopkins—his translation.
Q. What other monuments did he show you?
A. He showed me the south center monument.
Q. Was that the same monument that Mr. Bonillas has taken as his south center monument of the grant?
A. The same one taken by Mr. Bonillas and Mr. Richardson; yes, sir.
Q. Do you know whether or not that is the same one shown you by Mr. Richardson?
A. The same one taken by Mr. Richardson; the same monument.
Q. Is the south center monument, as shown you—is that the same one that is shown on Plaintiffs' Exhibit F 39?
A. The same monument.
Q. You have compared that photograph with the monument on the ground, have you?
A. Yes, sir.
Q. What other monuments, if any, did Mr. Richardson show you?
A. The northeast monument.
Q. Is that the same monument which was taken by Mr. Bonillas as his northeast monument of this grant?

A. The same monument.

Q. And that is the same one that was taken by Mr. Richardson in the map of Mr. Roskruge made in April, 1887?

A. The same monument.

248 Q. Is that the same monument which is represented in the photograph marked Plaintiffs' Exhibit F 37?

A. The same monument.

Q. You have compared that photograph on the ground with the monument, have you?

A. Yes, sir.

Q. I show you Plaintiffs' Exhibit F 35; of what is that a photograph?

A. That is a photograph taken of the same monument looking towards the east here.

Q. Of Plaintiffs' Exhibit F 37?

A. Yes, sir.

Q. At the northeast corner, what is the mountain represented there?

A. The Sierra del Cobre, the north end of the Huachucas.

Q. Was that pointed out to you by Mr. Richardson and named to you?

A. Yes, sir; that is what it was called in the papers I had with me.

Q. I hand you Plaintiffs' Exhibit F 36. What is that photograph of?

A. That is a photograph of the point of water near Mr. Igo's place—the Carricillo Spring.

Q. Was that pointed out to you by Mr. Richardson?

A. The spring; yes, sir.

Q. Was there any house there at the time?

A. No house there at that time; there was a house there but I do not think this house was there then that I recollect.

Q. That is the place Mr. Richardson pointed out to you?

A. Yes, sir.

Q. He said it was the Carricillo Spring?

A. Yes, sir.

Q. Did he show any other monument to you of the grant or landmarks?

A. Not any monument, not the exact spot where monuments were; he recollected where the monument was but was not able to find the exact spot; we put in a whole day; he was looking at all these places but we did not find the exact place, but we were in the vicinity of the monument, of the southeast monument of the San Rafael grant,

249 the one taken by Mr. Bonillas for his southeast monument of the public lands of Santa Cruz and the one taken as the southeast monument of the San Rafael grant; he also told me where the northwest monument was at the red hill, but did not know exactly where it was.

Q. Did he point out the red hill?

A. Yes, sir.

Q. Which red hill did he point to as the northwest landmark?

A. The same red hill that we take now.

Q. The same one taken by Mr. Bonillas in his survey?

A. Yes, sir; he pointed them out from having the title papers.

Q. Where does that red hill end and how does that compare with the point taken by Mr. Roskruge in his survey made in April, 1887?

A. The red hill ends where the left lower, lower left-hand corner of that monument is marked N. W. Mon.

Q. On the Roskruge survey on this map?

A. Yes, sir; right at the bottom of the end; that is where it comes down to the road of the valley; that is where the road comes.

Q. What road is that?

A. The road that leads from Crittenden to Harshaw.

Q. The point taken by Mr. Roskruge's survey is the same one taken by Mr. Bonillas.

Q. Mr. Roskruge made this survey?

A. Yes, sir; but after he had made it I was with him to the monuments.

(Objection to any conversation subsequent to the survey, or any conversation with him at all.)

Q. Give us a description of that country?

A. At this point here is where the mountains come down to the valley, where the road crosses the valley, the red mountain, taken by Mr. Bonillas, comes down to the valley, nearly to the foot of it; this point
250 here is the point that you see looking from here through the opening where the red mountain rises up and where the mountain proper stops on the foothills, break off, and further, this is up pretty far before this leaves this road and comes down there and there is the bottom at the very north end of it.

Q. Can you see that point where you say you can look through this vista from the north center monument towards the penasco down towards the arroyo that follows to this point here?

A. Yes, sir.

Q. Can you see the red mountain looking through this point?

A. You can on the other side; from my reading of the translation of the title papers it is at the foot of the mountains, and looking through there you can see it; the foot of it is right there.

Q. Why would you take the foot instead of the other side?

A. I take it because it squares out the points; the places where these monuments were established were established outside of the water to take in the water which was evidently the intention of the man who selected this locality; we take the title papers——

(Objection; let the title papers show for themselves.)

Q. How long have you been in the cattle business in Arizona?

A. Since 1882.

Q. Are you familiar with the cattle ranges in Arizona?

A. Yes, sir.

Q. To what extent?

A. I do not know whether I have been all over the Territory, the cattle ranges; I know a good many of them very intimately.

Q. Have you examined the country in a general way for the purpose of acquainting yourself with the land?

A. Yes, sir.

Q. What is the first requisite of a cattle ranch in this country?

A. Water, I suppose.

Q. How far will cattle travel for water or for feed; how far
251 will a stream of water run for cattle?

A. A very short distance in this country.

Q. About what distance?

A. Well, if cattle must walk over 4 miles in this country they do it to their detriment to water in this country; when they do not have to walk the cattle immediately get fat. No difference how good the grass is they must not go over 2 miles a day, since they lose flesh as soon as they go over 3 miles.

Q. Take this country around the point taken as the center of the grant by Mr. Bonillas' survey, what water is there in that vicinity?

A. No water then—just a little water running right around there now.

Q. Up here what is there?

A. Up to 1890 there was a little spring there in front of the house; the water ran from it maybe a few years; it did not give sufficient water for cattle, so I put up troughs to water them; they dug a ditch to keep the water in the bottom through that meadow; the water runs in the bottom of it now, right through the corner of the pasture.

Q. You are speaking of the Roskruge map?

A. Yes, sir.

Q. If this grant was located within four sitios in a square with the scale, the center taken by Mr. Bonillas, would water be found within the square of four sitios?

A. Yes, sir.

Q. Measured 100 cordels toward the north, south, east, and west, from the center taken by Mr. Bonillas, would water be within the square—permanent, running water?

A. There would be a little bit of water at the lower end of this south of the sitio, down there, just about opposite that point there, marked Sheehy Spring, and runs out below the limits of the sitio.

Q. Would there be any other water within the four sitios?

A. At the present time there is a little running water.

252 Q. Was there any permanent running water there within the four sitios at the time you first came to the ranch?

A. No, sir; it was perfectly level. There was nothing to indicate that in this valley.

Q. Within these four sitios, how many head of cattle would that water be able to support?

A. Very few. Immediately above the northwest corner of this pasture—Old San Rafael pasture—I built a water pond because cattle can not come down here to water. I built one there—also marked Pond—north of the center monument.

Q. How far is this from Saddle Mountain?

A. I can not tell about the distance; judged by that road I should say it is almost directly south; this is a piece of land, I judge by the pastures that we have at home, carry maybe 400 head of cattle without making artificial water for them.

Q. How do you judge; do you mean you have that land enclosed by a fence?

A. Yes, sir.

Q. Have you ever reconnoitered that country—and to what extent—from the center of the grant, as taken by Mr. Bonillas, 200 cordels north, south, east, and west?

A. I think I know every foot of it.

Q. If you lay off a square by connecting the cardinal points with straight lines, the cardinal points being 200 cordels north, south, east, and west from the center, as taken by Mr. Bonillas, on how many of the quarters would you find permanent running water?

A. The pond, on account of this water up here, that runs out there; then the well at La Zanja.

Q. That is, counting the water that was there in 1890?

A. Yes, sir; until after 1890; I know that, because Mr. Roskruge surveyed 16 square leagues, or whatever you call it.

Q. And within that the permanent water that was there prior
253 to 1890, how many head of cattle could you support on that part?

A. That is hard to tell, because at some seasons of the year, during the rainy season, you could keep more and at other times you could keep less, without you make artificial water.

Q. Where would the cattle have to come for water within such a grant?

A. They would have to come down here south of the place marked Sheehy Spring prior to 1890; very few, in fact, have fences.

Q. And the' would have to come to the Santa Cruz, south of the center monument?

A. Yes, sir.

Q. What is the conformation of that country for the purposes of a cattle ranch now, allowing the grant to be the full extent as represented on Mr. Bonillas' map; what is the conformation of that country in regard to its feasibility for watering cattle and as to keeping them within these limits?

A. I do not know whether I exactly understand your question; but if I do, the monuments as they are established there are put in the places where they would be by a man who was selecting that particular tract of country for a cattle ranch.

Q. Why would they be placed there?

A. Because they are placed on the surface of the earth just at those places where they control the water; further, that they are an absolute necessity to the man who wants to have sole possession of that land.

Q. Have you been to the north center monument of the grant as taken by Mr. Bonnillas?

A. Yes, sir.

Q. What did you find there?

A. I found there a monument under a large oak tree on the north bank of an arroyo.

Q. What direction does that arroyo run?

A. Southwest.

Q. Does it run towards any natural object that is spoken of in the title papers?

A. Yes, sir; the Penasco.

254 Q. What is the Penasco?

A. I have always been told that it was a rocky cliff, bare rocks out on the tract standing up exposed; I had them pointed out to me.

Q. I show you plaintiffs' Exhibit F 27. What is that a photograph of?
A. That is a photograph of the north center monument, with a man standing at the foot of it.
Q. What is the character of the country from that tree, looking north?
A. Some mesas sloping towards the Barbocomari Valley.
Q. And what is the immediate lands adjoining south?
A. Very rocky and broken and hilly—mountains.
Q. Where was the arroyo from that tree—in what direction?
A. South.
Q. What direction is the Penasco from that?
A. A little south of west.
Q. In looking toward the Penasco can you see from the vicinity of the north center monument any other natural object that is called for in the grant, title papers?
A. Yes, sir.
Q. What?
A. Red mountain.
Q. Describe how you see that from there?
A. Well, this arroyo or canon cuts the Canelo Hills in two, as it were, although some of them look fast to each other; still there is an open space through which you can see this red hill.
Q. What is the appearance of the red hill, as to whether it is connected with the other hills or not?
A. It stands in the open.
Q. Do you know where the Sonoite Hills are?
A. Yes, sir.
Q. Where are they in looking from the north center monument?
A. Towards the red hill, just further north.
Q. The same direction you are looking now, can you see them?
A. No, sir.
Q. Why?
255 A. Because the red hill intervenes. And these Canelo Mountains are in the way.
Q. Plaintiffs' Exhibit F 29—what is that a photograph of?
A. It is a photograph of the Penasco.
Q. The one about which you have been testifying?
A. Yes, sir.
Q. Plaintiffs' Exhibit F 30—what is that a photograph of?
A. That is a photograph of the Penasco looking at it from the south, and plaintiffs' Exhibit F 29 was looking at the Penasco from the west, towards the west.
Q. I show you plaintiffs' Exhibit F 34. What is that a photograph of?
A. That is a photograph of that arroyo that goes off from the north center monument.
Q. Looking in what direction?
A. Towards the southwest.
Q. I show you plaintiffs' Exhibit F 33. What is that a photograph of?
A. That is a photograph of the Penasco looking towards the east.
Q. I show you plaintiffs' Exhibit F 31. What is that a photograph of?
A. That is the same Penasco looking towards the east.
Q. I show you plaintiffs' Exhibit F 28. What is that a photograph of?

A. Of this same Penasco.

Q. Looking in what direction?

A. Looking toward the east.

Q. Did Mr. Richardson point out the Penasco to you?

A. Yes, sir; he pointed out the Penasco.

Q. Did he point out that same or a different place marked the Penasco?

A. The same place.

Q. The same object?

A. Yes, sir.

Q. Did he show you Saddle Mountain, located by Mr. Roskruge and Mr. Bonillas?

A. Yes, sir.

Q. I show you plaintiffs' Exhibit F 32. What is that a photograph of?

256 A. This is the north center monument, the red mountain shown in the distance.

Q. Do you see on that photograph any point called for in these title papers?

A. Yes; the red mountain.

Q. Did you see a monument of the grant at the foot of a tree taken by Mr. Bonillas and Mr. Roskruge as the north center monument?

A. Yes, sir.

Q. Did you compare each one of the photographs on the ground with the several objects and make a memorandum of the same on the backs?

A. Yes, sir.

Q. In looking from the north center monument towards the Penasco, in the direction that the arroyo runs, or the vicinity of the north center monument, can you see any other red mountain than the one taken by Mr. Bonillas as the northwest corner of this grant?

A. None other.

Q. Have you been to the northeast corner of this grant?

A. Yes, sir.

Q. Describe what you found there.

A. It is immediately at the northern end of the Huachuca or Sierra del Cobre Mountains, as called for in the title papers, where they come down to the level of the plain, where the mountains stop and the plain begins to slope off.

Q. Did you find there any particular object?

A. Right along the public highway is a pile of stones, placed there as a monument of the grant.

Q. Is that the pile of stones represented in plaintiffs' Exhibit F 37—this photograph?

A. Yes, sir.

Q. What is the appearance of those stones as to age?

A. The first time I saw it it looked as though it had been long there.

Q. When was that first time?

A. I saw it 6 or 7 days after the 26th of February, 1883; I was 6 or 7 days on the ranch; Mr. Richardson and I went by there on the way back to Tucson.

257 Q. What was the appearance of the tree taken as the north center monument of the grant by Mr. Bonillas?

A. It is a very large oak tree, three feet in diameter.

Q. What is the appearance of the rocks?

A. They have been there for many years; they looked as though some persons had set them on edge and three other stones on the pile up against the tree.

Q. Have you examined the country from the center monument as taken by Mr. Bonillas to the northwest corner of the grant sufficiently to be able to state whether there is any other red hill that will answer the calls of this monument, these title papers?

A. I have.

Q. Is there any other red hill?

A. None other than the one at the northwest corner of the grant.

Q. Is there any spring in the country anywhere from the center monument toward the northeast that will answer the call of the title papers as Carricillo Spring than the one taken as the El Carricillo Spring?

A. None.

Q. Have you been to the east center monument?

A. Yes, sir.

Q. Will you describe it?

A. Going up the Potrero Canada it is on the right bank, on the mesa above it.

Q. How long have you known that Potrero Canada by that name?

A. Since the first time I was there.

Q. How generally is it known in that country by that name?

A. Altogether.

Q. Ever heard it referred to by any other name?

A. It is called Parker's Canada now because the family of Parker lives there; boys of the old gentleman who is dead.

Q. Were they in there when you came there?

A. Yes, sir.

Q. Have you heard the residents of Santa Cruz speak of that canada?

A. Yes, sir.

258 Q. To what extent?

A. In telling about it in the town anywhere, why they call it Potrero Canada.

Q. That is the one described on Mr. Bonillas' map as the Potrero Canada?

A. Yes, sir.

Q. How high up in that canada with reference to the east center monument of the grant as taken by Mr. Bonillas do you find permanent running water?

A. The water rises below around in there from this east center monument; no permanent water above that; there is permanent water, but it don't flow all the way; it don't run by this point; the permanent water at this canada starts here; that is south of the line drawn west from the east center monument, the east center monument taken by Mr. Bonillas.

Q. Describe that east center monument.

A. It is on a mesa.

Q. Describe the monument itself.

A. It is a pile of stones about as high as this table, or higher—six inches or so.

Q. What is the appearance of it as to age?

A. It is an old monument. The first time I saw it it was lying down; different surveyors piled it up.

Q. What is the appearance of the base as to age?

A. It is an old monument; you see they are sunk in the ground.

Q. I show you plaintiffs' Exhibit F 42; what is that a photograph of?

A. It is a photograph of the east center monument.

Q. You compared that on the ground?

A. Yes, sir.

Q. I show you plaintiffs' Exhibit F 41; what is that a photograph of?

A. Photograph of the same monument.

Q. Have you compared that on the ground?

A. Yes, sir.

Q. Have you ever traveled from the center monument straight across to the east center monument as taken by Mr. Bonillas?

A. Yes, sir.

259 Q. In traveling across there is there any place that you found a monument that would answer to the calls of the title papers going on beyond the Canada of the Potrero?

A. I found no monument near that place that answers the calls where a monument should be.

Q. Describe the south center monument as taken by Mr. Bonillas?

A. It is on the north edge of the small mesa right at the place of Canada del Potrero.

Q. What is the appearance of the monument as to age?

A. It is an old monument; been there for years.

Q. I show you Plaintiffs' Exhibit F 38; what is that a photograph of?

A. Photograph of the south center monument, looking to the west.

Q. Describe the southwest monument of the grant as taken by Mr. Bonillas as shown you by Mr. Richardson.

A. It is a short distance south of the trail that goes through San Antonio Pass from Santa Cruz to Nogales, or Calabasas, or Tucson, about half way up the slope towards the summit of the mountain, and just as you get on the slope there are two little hills seen in the distance.

Q. When you get there, how many are there?

A. Three.

Q. Looking at them from the south center monument, as taken by Mr. Bonillas, how many do there appear?

A. Two.

Q. Have you ever been to the point taken by Mr. Bonillas as the west center monument of this grant?

A. Yes, sir.

Q. Describe that?

A. It is a very rocky, high hill, close to and southwest of El Caloso.

Q. What is the El Caloso?

A. It is a big, high lime hill, lime peak, limestone top.

Q. I show you Plaintiffs' Exhibit F 43; what is that a photograph of?

A. That is a photograph of this El Caloso.

260 Q. To what extent is that El Caloso visible from points of this grant?

A. It is a very prominent landmark.

Q. From where?

A. From all portions of the northeast, and southeast of it to a certain extent.

Q. Is there any other lime hill west of the centre monument as taken by Mr. Bonillas, or west of these ruins that are 100 cordels north of the center monument?

A. None at all in that whole range of mountains.

Q. Is there any other place that will answer the call west of the center monument than the one taken by Mr. Bonillas?

A. None.

Q. When did you first go to the center monument, as taken by Mr. Bonillas, of this grant?

A. '83, February.

Q. With whom?

A. Mr. Richardson.

Q. Did he point that out to you as the center monument?

A. Yes, sir.

Q. Is that the same place as taken by Mr. Bonillas and Mr. Roskruge?

A. Yes, sir.

Q. I show you Plaintiffs' Exhibit F 40; what is that a photograph of?

A. This is a photograph of the center monument.

Q. Is there a pile of stones at that place pointed out to you as the center monument?

A. Yes, sir.

Q. What was its appearance as to age?

A. It was an old pile of stones.

Q. What is there at that place, San Rafael, to distinguish it; the Old San Rafael?

A. There is a road, street between the ruins, just like a street going through a town, and these ruins are of adobe and have fallen down years ago; in places covered with grass; marks of walls or corrals, long houses.

Q. Any cross streets?

A. Two cross streets on it.

Q. What is its appearance as to age; the ruins?

A. It is all covered with grass.

261 Q. Were there any other ruins anywhere within the boundaries of that center monument as surveyed by Mr. Bonillas, that you know of?

A. No, sir.

Q. Do you know of any ruins a hundred cordels or about that distance going from the center monument taken by Mr. Bonillas as the center monument?

A. I know of no place of ruins about there.

Q. When you were there were there any people living in the houses?

A. No, sir.

Q. When was that?

A. In '84.

Q. How many houses were there?

A. It is a long house, built for any number of families; just one long row of rooms; there were two other houses there; one I do not think was ever completed; I do not think it ever was completed at all.

Q. Did Mr. Richardson tell you what that place was when you went there with him to purchase the grant?

A. He had bought out the man who lived here, bought his cattle from him, that is part of these he sold me; the cattle that he bought from that man and the place.

Q. Didn't tell you the name of the pla*de*?

A. They said that a man named Piscarro had lived there.

Q. Who was he?

A. They said he was a governor of Sonora.

Q. What did the old residents of Santa Cruz say, if anything, about Piscarro?

A. That he was driven out of Sonora and gathered up sufficient force to go back again.

Q. Driven out by whom, about what?

A. He was driven out sometime in the 60's; it was during the French invasion; some of the old people residing there said that he built these houses; that is what they said, that he built them.

Q. Have you seen these monuments many times, more than
262 once since 1883?

A. O, I have seen them many times.

Q. What is the appearance of these monuments since 1883, when you first saw them?

A. Just the same, exact locality, but they have been changed and built up some, stones from the bottom put up on top of them.

Q. Do you know how Mr. Roskruge came to put these ruins there on this map?

A. Yes, sir.

Q. How?

A. Well, at the time he was making the survey there he got somebody from Santa Cruz to show him the monuments and they pointed out to him the places; all the monuments of the Presidio.

Q. Did you have anything to do with putting these dotted lines here, the place marked N. E. Mont. Presidio?

A. It was never pointed out to me as such and it was then an open question, the point taken by Mr. Bonillas; they may have taken him and showed him this point, and in putting this there, he did it w*ith*out asking me; I can not tell you; he can tell you what this point is intended to be.

Q. Did he go back afterwards and run any lines?

A. I do not know whether he went back afterwards or whether it was there; may be that is the point that was pointed out to me; I know the other was erroneous; I would like to say that while I knew this was the southeast corner of the grant and the northeast corner of the Presidio I never knew it until after Mr. Bonillas made his survey; that was the reason that this was accepted by the town people as the present monument of their lands.

Q. Were you at the ranch when Mr. Bonillas made his survey?

A. No, sir; he came there to San Rafael when I was gone and he had it completed before I came home; I was away four or five months from the ranch.

Q. Did you direct him as to the points or places he should
263 make his survey?

A. Not at all.

Q. Did you tell him to make his survey in accordance with the title papers?

A. Yes, sir; I said there are the title papers and what I want is a survey made in accordance with them.

Q. When is the rainy season in that section of the country?

A. The rainy season commences from the 23rd of June until the 10th day of July and lasts for about sixty days, and then it rains again; it rains in the fall in November and December, and if we don't have them our cattle are poor; they cannot walk.

Q. In the ordinary year, then, the rains commence in the winter, the rainy season, in what month?

A. In the last of November and December and then in June. San Rafael is 5,100 feet, and in the Huachuca Mountains, there where this range crosses it, it is 8,250 feet; ordinary winters we have considerable snow there.

Q. Where are there on that grant permanent running waters; name them all?

A. Well, there are this one stream; it is marked there Harshaw Creek; there are two places in the red rock country.

Q. What is the character of the water there; where is it supplied from?

A. It just comes out of the ground; it is in the bottom of the creek; it runs a long distance and begins to dry up; it rises further down the stream and dry further up the stream.

Q. What is the conformation of the country in the mountain vicinity?

A. Rough, rocky; these mountains are a very rocky country, bluffs, rocky country.

Q. Are the mountains high?

A. Yes, sir.

Q. Is there any snow there in the winter time?

A. There is some snow; the Huachucas are rocky, abrupt.

Q. What other points are there water?

264 A. This place marked Canelo Creek; there is some water there that rises; then the next is in this place called Turkey Creek; then there is no permanent water until you get to this place here marked Igo; that spring is known as Carricillo Spring.

Q. Do cattle range from this water you refer to as Canelo Creek and Turkey Creek?

A. They do not; they cross here but very seldom; the Canelo hills, that is a very rough section of country; they cannot get cattle over there; they come down here; cattle go up there; I have seen cattle around in this vicinity.

Q. West of the east center monument?

A. Yes, sir.

Q. Any other water?

A. No water until you come down south of the center portion.

Q. To what place?

A. Here at the Canada del Potrero, water more or less according to the time of year.

Q. Any water, permanent running water over here at the southwest part of the grant, southeast?

A. There is the Jaralito in the southeast corner, permanent water, and then here at the Santa Cruz River there is permanent water.

Q. And that is all the permanent running water there is on the inside of the exterior boundaries of this map?

A. The place on this map Roskruge has marked Lochiel.

Q. What was the former name of that?

A. La Noria.

Q. What does that mean?

A. It means well, they told me.

Q. What sort of a place was this when you first came there?

A. There was two or three houses in it; that was all.

Q. Any water?

A. Yes; water for the people who lived there.

Q. Take the country which lies in the quarter of this grant which
265 runs from the center monument to the west center monument, from the east center monument to the south center monument, and from the south center monument to the southwest corner, and from there to the west center monument, and what is the character of the lands?

A. It is mesa lands.

Q. Do cattle range upon it?

A. They have to come down to the Santa Cruz River.

Q. Is there any permanent running water upon it?

A. None.

Q. Can water be secured upon it?

A. At certain portions of the year; yes, sir.

Q. The San Rafael Ranch house; is there any water there?

A. At the San Rafael Ranch, at the point marked San Rafael Ranch; yes, sir.

Q. The water is close to the surface of the earth?

A. Yes, sir.

Q. Did Mr. Richardson make any representations to you as to whether he was in possession of this property or not when he sold it to you?

(Objection to what representations he made as to possession as being immaterial and irrelevant. Overruled.)

A. The only representation that he made was that he was in possession; but he told it to me.

Q. Were there any other people living within the limits of the grant when you purchased it?

A. Yes, sir.

Q. How many settlers were on the lands?

A. I do not know how many.

Q. What did you do, if anything, with reference to the settlers who were on it?

A. I started in when I came there to buy out every man that was living there and did buy out many of them.

Q. How many?

A. Maybe a dozen or more; I only stopped because people whom I had bought out I believed got other men to jump the places and
266 sell to me again, and I did this of my own will and under the direction of my associates, by peaceable means; but after I paid out money for the improvements and locations and then he had some

friends to jump it, I got tired of it, and for that reason alone did not continue as I started to buy out every one.

Cross-examination by Mr. POPE:

Q. There are quite a number living on there which you did not buy when you went there?

A. A few.

Q. And those you have never bought out?

A. I have never bought out all that were there; no.

Q. You said you were one of the claimants of this grant?

A. Yes, sir.

Q. You are a claimant and interested in a number of these grants pending before this court; are you not?

(Objection as immaterial and irrelevant.)

A. I do not know just exactly as to that; I am interested in them.

Q. Your understanding is in these grants the question of demasias or outboundaries is concerned?

A. Yes, sir.

Q. You are interested in a number of grants in which that same question is involved?

A. Yes, sir.

Q. You are interested in the Babocomari grant?

A. Yes, sir.

Q. And in the Agua Prieta grant?

A. Yes, sir.

Q. And in the Buena Vista grant?

A. I do not think so; I wish I was.

Q. And you are interested in the Boquillas y Nogales grant?

A. Yes, sir.

Q. And the Aribac grant?

A. Yes, sir.

Q. Any others that you do not claim an interest in that are pending before this court?

A. No, sir; you have named them all.

Q. You have an interest in the Sonoita grant?

A. Yes; I believe I have a contingent interest; I do not know.

Q. Now, this understanding or agreement which you had with
267 Mr. Richardson, that transfer, was in writing was it not?

A. Yes, sir.

Q. Have you produced that in evidence?

A. I do not know.

Q. I will ask you to produce that instrument for the information of the court. You have testified as to its contents and I desire the original itself, and so we move to strike out all this evidence of ownership connected with it. You say you were not with Mr. Bonillas upon this survey made by him?

A. No, sir.

Q. How many times have you had this grant surveyed?

A. I think it was surveyed once by Mr. Roskruge and once by Mr. Bonillas.

Q. Are these the only times you have had a survey made of this grant?

A. That is all that I know of?

Q. You swear that these are the only two times?

A. If you mention any others that I do not recollect now.

Q. You ought to be better able to remember than I. Were you present when Mr. Bonillas and Mr. Roskruge on any of these boundaries—when they were making their surveys?

A. I only remember of being at one point, but I may have been to other places.

Q. So your statement as to the monument or monuments selected by Mr. Roskruge, and measured from by him, is based not on having been present, but what was told to you afterwards; is that true?

A. He showed me these particular points afterwards.

Q. Your information as to the points from which he measured and the courses which he took is based not on your observation upon the survey, but information given to you subsequently?

A. Yes, sir.

Q. You were not present on Mr. Bonillas' survey?

A. No, sir.

Q. So you do not testify that these were the points from which he made his survey or took his courses?

A. No, sir.

Q. You do not know of your own knowledge, from having been
268 with him, whether he did go to these particular points?

A. Not from having been with him; I have not told you that.

Q. Then, not having been with him, you do not know of your own knowledge, from the fact that you were not present on the survey, that he did go from these particular points?

A. I do.

Q. Only from what was told you subsequently?

A. Yes, sir.

Q. And your statement as to the identification or location of these points in the grant was not gained on any particular survey; is that true?

A. Yes, sir.

Q. Now, you said that Mr. Roskruge made some corrections in this map indicated by these dotted lines?

A. Yes, sir; and the corrections he just put down on the southeast monument of the San Rafael grant, indicated by the dots.

Q. How did he ascertain that? Did he ascertain it while you were present?

A. Yes, sir.

Q. Did he take measurements?

A. I do not know.

Q. So that is based upon observations he took at the time?

A. That I do not know.

Q. Do you know whether he took measurements?

A. I know he had an instrument, but he had located it when he was down there.

Q. And he platted it as indicated by that dotted line?

A. Yes, sir; I suppose so.

Q. Now, as a matter of fact, the first location is entirely different?

A. It is absolutely the same place; I think it is the same place.

Q. Look on that map and state whether or not that place marked "S. E. mon.," at the end of the dotted lines, is at the same place as indicated by the conjunction of these red lines—this point here—and state whether or not these two points on the map represent the same point?

A. They are different points on the map.

269 Q. And the one at the point at which the red lines of Mr. Bonillas come together represent the southeast corner, do they?

A. (No answer.)

Q. The point at which these red lines come together is the southeast corner of Mr. Bonillas?

A. Yes, sir.

Q. And the point indicated at the conjunction of these dotted lines is the southeast corner of Mr. Roskruge, placed there when he came back with you from these observations?

A. I do not know that I understand.

Q. The place marked "S. E. mon." at the conjunction of these two dotted lines, is the place at which Mr. Roskruge placed the southeast corner when he came back from his investigation?

A. You mentioned two different places for the same place; is that my understanding?

Q. I asked you if the place marked "S. E. mon." on this map, at the conjunction of these two dotted lines, is the place that Mr. Roskruge designated as the southeast corner of this grant to be on that map when he came back from this investigation with you?

A. I do not understand.

Q. You said that Mr. Roskruge made some changes in this map when he came back from the investigation?

A. Yes, sir.

Q. That change was designated the S. E. mon. of this grant?

A. Yes, sir.

Q. He was just taking data, as I understand it, then?

A. Yes, sir; just looking after it.

Q. And after he accumulated this data the point was marked on this map as the S. E. mon. of this grant by Mr. Roskruge?

A. He put it right there.

Q. And that was after making this investigation?

A. I think so.

Q. And that is a different place that Mr. Bonillas has indicated as that point, the southeast corner?

A. At a different place from what Mr. Bonillas has it.

270 Q. Now, I believe you testified in the Babocomari case in this court?

A. I believe I was a witness; yes, sir; I do not remember distinctly.

Q. You testified on that trial, as to the rainy season, in this court?

A. Yes, sir.

Q. Did you testify that time that the principal rainy season was from June to September?

A. I testified so.

Q. When is your dry months on this country?

A. The section where I live, right now, the present time.

Q. How is the month of June as to being dry?

A. It gets drier and drier until it rains.

Q. During the rainy season where is the flow in the Santa Cruz river; where does it flow from and to where during the rainy season; from where to where?

A. It starts right there at this point; this represents the mesa, marked Hose Corral.

Q. And flows down to where?

A. Comes right close to this Saddle Mountain and comes down this arroyo on down here.

Q. Just indicate it?

A. From the Saddle Mountain it comes here to this road right down here, and then right down in there.

Q. How far does it flow south?

A. To Tucson.

Q. That is during what portion of the year?

A. When the rain commence'.

Q. When does it commence to rain in ordinary seasons?

A. From the 23rd of June to the 10th of July, about.

Q. And for what time?

A. It ordinarily rains about forty to sixty days.

Q. There is no flow, then, in that river in the early part of June?

A. No flow in the river, just dry.

Q. It don't run in the month of June only from where, in the early part of June?

A. It is running now from about here, from Sheehy Spring.

271 '. Is this about your dry season?

A. It gets drier every day.

Q. How about the flow in the Santa Cruz River in the month of September?

A. You know, this river never has any flow in it up here.

Q. Now, along here it runs every month?

A. Sometimes; that just depends on the condition of the year; of course there is more water in the rainy season than during the dry.

Q. How about the flow in the month of October in the river?

A. Well, I suppose it rises a little better than in September along over a portion of the river right there, right opposite this point; just opposite this line running from the old San Rafael pasture, a little above the Tombstone road, as indicated on this map by R.

Q. You have rains in October?

A. Yes, sir.

Q. As a matter of fact, don't you know the presumption is that it rains there every year in the month of October?

A. I do not know; it may be.

Q. So far as these monuments are concerned, your idea *is* that the claimants would place these monuments just where they would control the water?

A. I think that is the reason the claimants asked for the land.

Q. Now the Canelo Hills cross this property from right to left?

A. Yes, sir.

Q. On the one side of the Canelo Range the Santa Cruz and on the other the Babocomari?

A. Yes, sir.

Q. This map takes in a number of water sources of the Babocomari on the south side and tributaries.

A. No, sir; it don't infringe at all.

Q. Now, the position that you follow in locating this grant is to go out and include —— of the water sources that don't infringe with anybody else?

A. No, sir; we don't take anything that belongs to any other property.

272 Q. Your northwest corner is about ten or twelve or fifteen miles from the center point.

A. About ten miles.

Q. And, now, what are these waters tributary to?

A. All this water from here runs in the Sonoite River.

Q. And your idea is that all this water in these tributaries of the Sonoita and Babocomari belong to this grant?

A. No, sir; just take in the water that was particularly adapted to pasture this particular tract of land.

Q. And you think for that purpose it should take in the Canelo Hills and the Red Rock country?

A. Take in the water courses.

Q. Take in the water courses of the Sonoite and the Babocomari?

A. Just take in the water courses.

Q. Take in all these Canelo Hills from the northeast and across towards the Red Rock country, taking in all these tributaries of the Sonoito and the Babocomari?

A. Yes, sir.

Q. Now how far is that northwest corner from the Sonoite River?

A. It is about four miles, I guess.

Q. The Sonoite River is a very good water course, is it not?

A. Yes, sir.

Q. You wanted to get a monument by water courses?

A. No, sir.

Q. The reason you set it out there is due to the fact that it would include more water?

A. No, sir; my reason for going to that point was because the title papers called for it, as the northwest corner of the San Rafael de la Zanja grant; that the northwest corner should be there; and I now say that this monument is the northwest corner, the particular, identical monument called for in the title papers; the title papers state, the translation, that the monument was at the foot of the mountains.

Q. The northwest corner of Mr. Bonillas is some two or three
273 miles south of the northwest corner of Mr. Roskruge as it is indicated on this map of Mr. Roskruge.

A. Yes, sir.

Q. Look at this photograph, plaintiffs' Exhibit F 32, and state what that is and when it was taken.

A. This is the north center monument.

Q. Where is the north center monument?

A. It is right at the foot of that oak tree.
Q. Which tree?
A. That tree where those persons are standing.
Q. Now where is the red hill?
A. Right directly in front.
Q. Where is the Penasco from that?
A. Southwest; this is not taken at the point where you look at the Penasco.
Q. Where are the Sonoite Hills from there?
A. They are beyond, farther.
Q. From what point can you see the red hill and the——
A. This arroyo goes directly west for a short distance; this is taken looking west.
Q. About how far do you have to go to see this Penasco?
A. Just a little ways from this tree; I do not know how far.
Q. Do you see the Sonoite Hills from there?
A. No, sir.
Q. What cuts them off?
A. This mountain cuts them off.
Q. Where are these Canelo Hills, as indicated here south of this tree?
A. They are exactly west of this.
Q. What is that toward the north from that oak tree?
A. Due north the Babocomari Valley.
Q. What is that due south of it?
A. The San Rafael Ranch.
Q. What is the character of the country?
A. Very rough, broken, red-rock country.
Q. This is due north of the Canelo Range?
A. Yes, sir.
Q. Is this an open country from this tree towards to Babocomari Valley? Can you see the Babocomari Valley from there?
A. No, sir; not exactly from the tree.
274 Q. Where did you have the Empire Ranch?
A. Right north from this; right directly back of this range.
Q. Did you say that this elevation here on the right side of the photograph was the Canelo Hills?
A. A portion of the Canelo Hills.
Q. And these Sonoite Hills are still away off in the distance?
A. Yes, sir.
Q. The Canelo Hills lie between this point and the Sonoite Hills?
A. Yes, sir.

Adjourned.

MAY 18th, 1899—10 a. m.

Mr. POPE:

Q. Mr. Cameron, you testified yesterday about the course of the Santa Cruz River in times of rains?
A. Yes, sir.
Q. And you described that course, I believe, in your testimony yesterday?
A. Yes, sir.

Q. I wish you would indicate on the map the course of that stream running southwest from the horse corral.

A. This country up here north of the horse corral slopes in the first place in the direction of the west; that line represents the slope of the red-rock country, then goes down this way here to Saddle Mountain, and then turns this way and runs west.

Q. I wish you would indicate on that map the direction; make a line, and continue that line, showing where it comes back in the valley.

A. Here is a road coming from Harshaw, from Martinez to Harshaw; the water comes from above horse corral towards Saddle Mountain, and then runs half a mile or perhaps a mile; then it runs right down this Harshaw road.

Q. I wish now you would indicate on that map the course of that road after you pass that mountain.

A. This map shows that this road runs up the valley to the
275 letter C, southwest of the horse corral, to the upper windmill; I used to have a windmill there, right at this place marked upper windmill, on the ranch; before it was known as Coyote Point; and then it comes to the valley up through which this road passes going from Huachuca to Harshaw, which runs through Canelo Pass, marked Canelo Pass, and the water comes through the main San Rafael Valley.

Q. What is the course of the water from this point in the vicinity of the horse corral down to the place you have got marked here as the pond?

A. The water runs south. This is a gulch here that runs up to the road from Fort Huachuca to the main valley to a spring known as sheep ranch, marked sheep ranch.

Q. And what spring is that?

A. It is seepy water.

Q. It is a spring?

A. No.

Q. You got it marked spring.

A. Somebody has; Mr. Roskruge has, I suppose.

Q. Mr. Roskruge made that survey for you, did he not?

A. Yes, sir.

Q. What is this gulch that you got marked here?

A. That is another gulch just to the left of the spring that goes off in that direction.

Q. And this Mowry Gulch that you have marked here, does that run into the Santa Cruz Valley from the west, as indicated on this map?

A. Yes, sir; it comes to the point where this Mowry Washas, we call it, enters.

Q. Where did you say this gulch comes in? Where does that gulch join this gulch coming from the north here by the water spring?

A. They all come in at one point, at the upper end of the valley.

Q. So that all these various gulches you have indicated are feeders forming the head waters of the Santa Cruz River?

A. Yes, sir.

Q. Now, yesterday I asked you as to the number of surveys you had made of this grant and you could recollect only two?

A. Yes, sir; that is all.

276 Q. The Roskruge survey and the Bonillas survey?
A. That is all I believe.
Q. Did you have a survey made shortly after you took possession there, made by Mr. McLaughlin?
A. No, sir.
Q. Did you not have Mr. McLaughlin make a survey of this grant?
A. No, sir.
Q. For whom was that survey made?
A. Mr. McLaughlin told me——
Q. For whom was that survey made?
A. I think—I do not know.
Q. Were you on it?
A. Yes, sir.
Q. How did you happen to be on it?
A. I was telling you, Mr. McLaughlin said that he was surveying the 4th standard south; I think he said that, if I am not mistaken; and that he wanted to know the monuments of the San Rafael grant, and asked me for the title papers in order that he might locate them.
Q. And how many of these monuments did you go to with him?
A. All of them.
Q. What year was that, prior or subsequent to the survey of Mr. Roskruge?
A. I think it was before.
Q. It was about 1883 or 1884, was it?
A. '83 or '84.
Q. It was shortly after you bought the tract?
A. It was a good while ago; May, '85.
Q. You said you went with him to all these monuments?
A. Yes, sir.
Q. At the time you also built up all these monuments, did you not?
A. They may have made them up; I did not pay any attention.
Q. You were along at all these monuments?
A. Yes, sir.
Q. And the monuments were built up at that time?
A. I do not think that we touched them any.
Q. Do you swear that you did or that you did not?
A. I would not swear. Some were built up and some were not.
Q. Which ones were built up?
277 A. I do not know as any of them were; I never paid any attention to the monuments—never did. I did not think that cut any figure in the question whatsoever.
Q. You have no recollection of their having been built up at that time?
A. They may have.
Q. You were there all the time, were you?
A. I think so.
Q. Don't you know as a matter of fact that there was no monument located at this northeast corner of the grant?
A. I know positively there was.
Q. You were there?
A. Yes, sir.

Q. Your north center monument, was that built up at that time?
A. No, sir; could not find it.
Q. Could not find your north center monument at that time?
A. No, sir.
Q. When did you find it?
A. Long time after that.
Q. You do not know where it was taken?
A. No; I do not know.
Q. This northwest corner that Mr. Roskruge has got on his map, did you at that time build up a monument there?
A. No, sir; none whatever.
Q. You never built it up there at all?
A. I swear to it. I never touched it.
Q. What about this monument here at the southwest corner?
A. Never touched it.
Q. What about your south center monument?
A. Never touched it.
Q. Did you know where that monument was at that time?
A. I do not know that I did. I do not think it had been shown to me at that time.
Q. What about your east center monument as to being built up at that time?
A. Never touched it.
Q. So that the only one that you have any doubt as to whether it was not touched is the northeast monument; is that true?
A. Don't have any doubt; that was there when I went there.
Q. Did you build it up at that time?
A. No, sir.
278 Q. You swear to that positively?
A. Of course I do. I never touched them. I did not think that the monument itself cut any figure in it.
Q. Did you or did you not add anything to this monument?
A. We may have put some stones on it. The monument was right by the side of the road.
Q. You say you added something to it?
A. I think so.
Q. You added stones to it?
A. May have added stones to it, that is all.
Q. How many of these monuments then did you add stones to on this survey?
A. I do not think that we added stones; perhaps piled them up.
Q. This northeast corner is at Mr. Igo's?
A. Yes, sir.
Q. Every survey that was made every monument was made larger?
A. I do not think they were any larger. The stones, we piled them up from around the bottom and made them into a pyramid; conical pyramid. The engineer told me to pile them up to put a flag stick in the center so as to get the exact location.
Q. But after you got through these monuments were larger than they were and in better condition than they were?
A. I do not think so.

Q. You swear that they were in no better condition than when you first saw them?

A. Yes, sir; swear to that, certainly.

Q. So that these monuments, as to appearance, were the same as they were when you first saw them?

A. No; I do not say that. I mean that the monuments were at the same place where I first saw them.

Q. And as to size, when you first saw them?

A. Just the same size; some may be piled up.

Q. You say you may have added some?

A. Yes, sir.

Q. You have seen these photographs that were tendered in evidence?

A. Yes, sir.

279 Q. These monuments, it seems, had just been piled up, had they not?

A. They may have been piled up before; I do not know; I was not present.

Q. Your monument at the center—did you say that that monument was there when you first went there?

A. Yes, sir.

Q. Just like it is now?

A. No.

Q. What is the difference?

A. Built up a little more, perhaps.

Q. All of these monuments on the exterior boundaries are larger piles than they were when you first went there?

A. No more.

Q. You say there were stones or rocks around on the ground—lying scattered around?

A. Yes, sir.

Q. Now they are, as shown in these photographs, in pyramids or conical form?

A. Yes, sir.

Q. How do you account for their difference, lying down flat then and the stones piled up in these photographs?

A. Perhaps he piled them up just before.

Q. When were these photographs taken?

A. I do not know.

Q. Who took these photographs?

A. Mr. Buehman.

Q. Who paid for them?

A. I did.

Q. And you do not know when they were taken?

A. I can find out, I suppose.

Q. When were they taken with reference to this survey of Mr. Roskruge?

A. I believe that was taken at the time that survey was made.

Q. The survey of Mr. Roskruge?

A. Yes, sir; that is my impression just now, but I am not positive about it.

Q. And you swear that you were never present at any time when any of these monuments were built up?

A. No; different people may have put stones on them; I myself did on different occasions.

Q. Did you do that?

A. I did every time I got around, I suppose, perhaps.

280 Q. Do you swear that you did not build up any of these monuments or was not present *present* when these monuments were built up by these surveyors?

A. I swear positively that I never was present, either by myself or with anyone, when these monuments were built up.

Q. Do you swear that you were not present at any time with these surveyors when these scattered stones were built up?

A. I suppose I was down there for a time.

Q. And you were there?

A. Yes, sir.

Q. You swear that there were some scattered stones on the ground at the time that this monument was built up on that spot?

A. Yes, sir.

Q. Do you swear that Mr. Richardson showed you any monument at that northeast corner?

A. Yes, sir; that is the monument.

Q. That is the monument shown on this photograph?

A. Yes, sir.

Q. Did you say that Mr. Richardson showed you the center monument?

A. He showed me the place; I did not look for monuments; he showed me the locality.

Q. What locality did he show you?

A. Right there at the edge of the mesa of the Old San Rafael; I just looked for the locality; I never looked for the monuments.

Q. Did Mr. Richardson show you the post at La Zanja, which post had been put there by Wasson, surveyor-general?

A. He showed me the place at La Zanja.

Q. Did he show you the post at the southeast corner and the northwest corner, I believe, of the Allis survey, and that center post of the Allis survey, and the post at the northeast corner?

A. Yes, sir.

Q. And did he show you this center monument?

A. Yes, sir; at the San Rafael road, right here.

Q. Did he show you this starting point of the Allis survey at La Zanja?

281 A. The starting point was at this Old San Rafael, according to the title papers he showed me.

Q. Now, you say you did not attach any importance to these monuments—any importance to the surroundings of this grant?

A. Never did; I did not think it cut any figure.

Q. How is this country on the east side of this Canada del Potrero; what is that country along there?

A. What I have seen it is very rocky.

Q. Lomas and hills, are they not?

A. No; I think not. It is mesa land.

Q. Mesa land?

A. Yes, sir.

Q. All this country here east of it is mesa land?

A. Yes, sir.

Q. You attach no importance whatever to the fact that your east center was at a point on this mesa—that this mesa was selected as the east center monument?

A. No more than that the title papers calls for it.

Q. Suppose you go to some place down below the Canada del Potrero for your east center monument?

A. That don't answer the calls of the title papers, the expediente.

Q. What particular calls of the expediente?

A. I do not know as I can tell you, but I can show it to you on the ground.

Q. That that is the only point?

A. No mistake in it.

Q. If the expediente says on the edge of the mesa, is that beyond the Canada del Potrero?

A. Yes, sir; this is beyond the Canada del Potrero.

Q. In going from your center monument, you don't go due east to your east center monument?

A. No, sir; you go northeast.

Q. In going to your east center monument from your center monument, you cross the Canada del Potrero?

A. Yes, sir.

Q. And you selected as the east center monument a point which is on the mesa which is northeast from your center monument?

A. Yes, sir.

Q. This east center monument is also on a direct line with your west center monument, passing through the center monument?

A. Yes, sir.

282 Q. They are not east and west, are they?

A. They are not as shown on that map.

Q. You say there is no monument at this place Mr. Bonillas has got here as his northwest corner?

A. Well, I do not know whether there is a monument there or not.

Q. This Cerro Colorado is a part of the Plomosa Range?

A. Yes, sir; the northern extremity of the Plomosa Range.

Q. Looking at it from the east standing at the south part of the Plomosa Mountains, does it extend south from this point you got here, northwest corner on Bonillas' survey?

A. It extends from that place to this point down south.

Q. How far south?

A. Standing at the bottom of it, you mean?

Q. No; standing east of it and looking at it from the east, how far is it from this place you got marked northwest corner? I mean from the point you got marked *marked* northwest corner to the end of this Cerro Colorado going south, to the southern extremity.

A. It may be a mile or two miles.

Q. And how far is it from that northwest corner you have got designated as Mr. Bonillas' northwest corner to the north foot of that mountain, the north extremity of it.

A. It is a very short distance down from the road.

Q. You said this northwest corner was at the north foot of this Cerro Colorado.

A. This point is just by the road.

Q. How far from your northwest corner is it from that place as laid down?

A. Very short distance.

Q. About how far?

A. I suppose it was half a mile; I am guessing at its length; it would be a mile along the crest of the mountain; it comes right up to a peak.

283 Q. That is the distance from the northern extremity to the southern extremity?

A. Yes, sir; it was a mile from this point; about a mile in length from north to south.

Q. You do not designate any particular place?

A. The expediente, the translation given to me, says standing at the north center and looking through an open place it would disclose a red mountain, the foot of which was taken for a monument.

Q. Does the expediente say anything about which foot this monument is on?

A. It may; I do not know; it just says at the foot of it.

Q. You are acquainted with these Canelo Hills?

A. Yes, sir.

Q. How do you get across them, or can wagons cross them?

A. Yes, sir.

Q. Where does the main wagon road run?

A. Well, I suppose that is about the place.

Q. How many well-defined passes are there in these Canelo Hills—how many passes?

A. There is a pass here called the Pass of the Muchacita, marked on the map in lead pencil Muchacita Pass, and the letter L.

Q. Is there any other pass in the Canelo Hills?

A. This wagon road is called Canelo Pass, marked on the map Canelo Pass in lead pencil.

Q. Now is there any other pass up there towards your north center monument?

A. Yes; there is a pass that goes through here that is called the Harshaw Pass; there is another pass out west of this wagon road, a mile or two.

Q. How far is that north and west of the Canelo Pass?

A. A mile or two; it comes in the mountains and comes by this point here at Horse Corral.

Q. Where is Saw Mill Pass? Saw Mill Pass, is that Tanners Pass?

A. I heard the same thing called both names.

Q. Where is Tanners Pass?

A. It is in the Huachuca Mountains.

284 Q. And about where with respect to your east center monument?

A. It is perhaps east of the east center monument; I do not know whether it is exactly east or not; somewhere around here, east of the east center monument.

Q. Where is Elias Pass? Does Elias mean Sycamore Pass?

A. That is the pass that goes down this way; it is Sycamore Pass; that goes between the Canelo Hills and the Huachuca Mountains.

Q. Where does the Sierra del Cobre come with respect to this Tanners Pass?

A. The Sierra del Cobre was the old name of the Huachuca Mountains.

Q. And how far south does it go?

A. It goes to the south end of the Huachucas; that is the information that I have.

Q. Then you do not claim that the Sierra del Cobre is a spur of the Huachuca Mountains at its north end?

A. Well, that is not my understanding of it, that the Sierra del Cobre was not a spur of the Huachucas, as a different thing, as the Sierra del Cobre themselves. They may have local names for the different spurs.

Q. Did you employ Mr. Wolfley to make a survey of this tract?

A. No, sir.

Q. Do you remember that he made a survey or reconnoissance of it?

A. I do not remember that Col. Wolfley ever made any survey of this grant.

Q. You have no knowledge of this survey?

A. He may, but not to my knowledge.

Q. Never heard of any such a survey?

A. I do not recollect it.

Q. Would you recollect it if he had made such a survey since you have been on that tract?

A. I think I would. I do not believe he ever made any survey. I had several engineers there for different purposes.

Q. Did he make a reconnoissance of this tract for you, or since you have been there?

A. I think not.

285 Q. Did you go around with him on any reconnoissance?

A. I may have been with him to the monuments, because he stayed there four or five months, something like that, and he rode around with me a good deal, and he may have been to every monument.

Q. Did he do any surveying while he was there?

A. I think so. He might have done it in San Rafael for my brother, but I have no recollection of it.

Q. Your brother was interested in this grant at the time?

A. Yes, sir.

Q. You don't deny that you went around to those various monuments?

A. I most likely did; hardly possible for a man to be riding all the time every day and not get around to show the boundaries.

Q. You say there was a pile of stones at your center monument at the time Mr. Richardson pointed it out?

A. I did not say so.

Q. There is a pile of stones there now?

A. Yes, sir; and may have been one then.

Q. Quite a large pile of stones there now?

A. No; just a little pile.

Q. That pile of stones is on the edge of the mesa?

A. Yes, sir; little bit of a pile two or three feet high.

Q. When did you first see that pile of stones?

A. I do not know; it may have been the very day he took me there; I do not know.

Redirect-examination by Mr. HENEY:

Q. Before purchasing this grant did you submit the title papers to any attorneys for their opinion as to the validity of the grant?

(Objection as immaterial.)

A. Yes, sir.

Q. To whom?

A. Col. James Briskil and Mr. James A. Anderson, an attorney of this city, and then, with the data they gave me, I took it East and
286 submitted it to Mr. Kerr and some home attorneys.

Q. Was Mr. Kerr your lawyer?

A. Yes, sir; in the city of Philadelphia.

Q. How long had he been practicing?

A. He was a man of considerable age; he has been practicing, to my knowledge, since 1876, and perhaps before that a long while.

Q. The attorneys here in this city, what opinion did these attorneys give you as to the grant as to its validity?

A. They told me that it was a valid grant under the laws of Mexico, and that the title that Mr. Richardson offered to sell me was a correct title or legal title.

Q. What did they say as to the extent of the grant?

(Objection as immaterial and irrelevant.)

A. They told me that the title papers carried the grant to the exterior boundaries.

Q. Examine this paper and state whose signature is on it.

A. Mr. R. R. Richardson's.

Q. Do you know Mr. Richardson's handwriting?

A. Yes, sir.

Q. Whose signature is this besides Mr. Richardson's; whose signature is that?

A. Mr. T. M. Styles, an attorney of this city; that is his signature.

Q. Do you know his handwriting?

A. Yes, sir.

(We offer this paper in evidence as plaintiffs' Exhibit F 47, power of attorney between Alfred A. Green and R. R. Richardson. Marked "Plaintiffs' Exhibit F 47."

Also an agreement between A. A. Green and R. R. Richardson, dated August 10th, 1880. Marked "Plaintiffs' Exhibit F 48."

Also an agreement between A. A. Green and R. R. Richardson, dated November 5, 1880. Marked "Plaintiffs' Exhibit F 49."

Also an agreement between A. A. Green and R. R. Richardson, which last agreement was recorded in the office of the recorder for Pima
287 County, Arizona, January 3, 1881, at the request of R. R. Richardson. Marked "Plaintiffs' Exhibit F 50.")

Q. Did you ever place any stones upon any of the monuments of this grant other than the stones lying contiguous and touching the foundation stones of the monuments that you found there?

A. None others.

Q. When you state, then, that you may have added, you mean that you put no new stones on them?

A. Yes, sir; that is exactly what I did. I piled up the stones that had rolled off and thrown down from one cause and another.

Q. From the old San Rafael ruins going in the direction of the monument taken by Mr. Bonillas as the east center monument of this grant, what is the character of the country?

A. It is rolling mesa country.

Q. For what distance, how wide, how far can you travel a team from the old San Rafael ruins in the direction of the east center monument, as taken by Mr. Bonillas, in a wagon?

A. You can drive a team to the bank of the Canada del Potrero.

Q. Standing at the old San Rafael ruins can you see any mesa beyond the Canada del Potrero looking towards the east?

A. I do not believe from the ruins you can.

Q. Can you from the immediate vicinity of the ruins?

A. Yes, sir.

Q. At what point can you see the mesa?

A. Just about at this point here.

Q. Where?

A. From the east center monument south.

Q. Can you see that mesa from the old San Rafael ruins at any other point on the mesa?

A. No; that is the only place you can see it, standing at the east center monument.

Q. Can you see the old San Rafael ruins?

288 A. You can see the ruins; right close to them there is a high mesa right by them.

Q. Can you see the arroyo or mesa?

A. Yes, sir; if that was removed you could see the ruins.

Q. Looking in that direction from the east center monument, how far across the grant can you see from here, looking west?

A. You can see the El Caloso.

Q. Can you see towards the southwest of the El Caloso, which was taken as the west center of the grant?

A. I think you can see it also.

Q. Don't you know you can see it?

A. I looked at it myself with a glass.

Q. Did Mr. Richardson, at the time he was trying to sell this grant, show you the north center monument of the grant?

A. No, sir.

Q. Where did he say that was, or what did he say about it?

A. We rode all over that portion of the country immediately above the horse corral and we were unable to find it, and he told me that it was further north; that he had never been able to locate it.

Q. How did you come first to find it?

A. I hunted for it for months, for a long time, many, many days, looking for a point that would answer the description in the title papers, and we could not find it; we finally sent for Mr. R. C. Hopkins, who used to be connected with the surveyor-general's office in this Territory.

Q. Was he then connected with the surveyor-general's office?

A. I think not; I think we sent to—he was living in San Francisco, and we wrote to him to come down; we drove him around over the grant with the title papers, and had some different people with me, and finally I took him over to the northeast corner, and in reading it he said that it ought to be some point where this red hill could be seen through the ridge of mountains, seen through an open in the mountains which was to be discovered in a clear place; and when he told that, one of
289 the men said that I can immediately take you to a point. I know where there is a point which you can see through; I can take you to that point. We, of course, told him to do so, and he immediately took us around where the north center of the grant is located, and we looked through the hills and we discovered this red mountain, and discovered that arroyo that leaves this north center monument that runs in the direction of the Penasco, and it was so plain to our minds that that was the locality intended and called for that we immediately knew it and have never had any reason to change our minds.

Q. Did you find any monument or oak tree on the bank of the arroyo?

A. We found the oak, very large oak tree.

Q. The same stones and the same tree as shown in this photograph now here in evidence?

A. Yes, sir; the same tree and the same stones.

Q. Were they in the same position that are now in?

A. Practically; yes, sir.

Q. You were asked if you had an interest in the Sonoite grant?

A. Yes, sir.

Q. How much did you pay for that interest?

(Objection as immaterial.)

A. I think ten thousand dollars.

GEORGE J. ROSKRUGE, sworn on the part of the plaintiffs, testified upon direct examination by Mr. Heney as follows:

Q. What is your business or profession?

A. I am a surveyor.

Q. How long have you been a practical surveyor?

A. For about 26 years.

Q. Have you held any official position in this county as surveyor or in this Territory at any time?

A. Yes, sir; I have been county surveyor of Pima County and deputy U. S. mineral and land surveyor for Arizona.

Q. Occupied any office in the surveyor-general's office?

A. Yes, sir; I was for 6 years chief draughtsman; about 3 *three*
290 years chief clerk and a year and a half surveyor-general.

Q. Did you ever see the map which is hanging on the wall there, marked surveyed and drawn by George J. Roskruge, April, 1887, county surveyor Pima County, A. T.?

A. Yes, sir; I made that map—that is, the portion in black; these red lines I do not know anything about them.

Q. From what data did you make that map?

A. From a survey made by myself.

Q. From what did you make the survey?

A. From a copy of the expediente of the original title of the San Rafael de la Zanja private land claim.

Q. Where did you get that copy?
A. It seems to be a translation.
Q. Do you not read Spanish?
A. No, sir.
Q. Nor talk it?
A. Just a very little.
Q. Was it a certified copy or not?
A. That I could not tell.
Q. Have you ever read what you know to be a certified copy of the title papers in the San Rafael grant?
A. I believe I have.
Q. In regard to the descriptions of the monuments and the calls of the title papers was the copy you had at the time the same as the certified copy that you read?
A. I believe it to be so.
Q. You have heard these calls stated a good many times?
A. I have read them over a good many times; I have got them pretty well committed to memory.
Q. When did you make this survey from which this map was made?
A. I commenced to make that survey from which this map was made in 1880.
Q. Were you employed by Mr. Richardson to make that survey?
A. Yes, sir.
Q. Did he claim ownership of the grant at that time?
A. I do not know whether Mr. Richardson or Mr. Green.
Q. Who was in possession?
A. That I could not tell.
291 Q. Who was with you on that survey?
A. Mr. R. R. Richardson, Mr. Howe, and a man named Rudd, Mr. Green, and myself; that is a portion of the survey. I went down afterwards. I was there again in 1887.
Q. For whom did you go in 1887?
A. I went there for the people to make a survey of the county afterwards and to make any survey that I might be called upon to make as county surveyor.
Q. And that is the reason you put the title of county surveyor and your name on the map?
A. Yes, sir.
Q. The first time you surveyed on this grant was in 1880. That time you say you surveyed for Mr. Richardson with Mr. Howe. Who was with you besides Mr. Howe?
A. Mr. Richardson and Mr. Scott.
Q. What is the first point you went to on the grant?
A. The first point I went to was at the south center, at the mouth of the Potrero, which Mr. Richardson and Mr. Scott said was the south center of that grant.
Q. Have you been on the ground since Mr. Bonillas made a survey of that grant?
A. No, sir.
Q. Have not been to the monuments?
A. That is, I do not think I have.

Q. Why did you go to the monument at the mouth of the Potrero Canada? Who suggested going there?

A. Mr. R. R. Richardson took us there as a starting point to make that survey. At that time no one knew what the center monument was of the grant, and that was a well-known point upon the Canada of the Potrero, and being known also as the south center of the San Rafael de la Zanja private land claim. That is where we commenced our survey.

Q. Did Mr. R. R. Richardson take you there to make it?

A. Yes, sir.

Q. Did you ever see that photograph before?

A. That I could not tell. I believe I have. I don't say that for certain, you understand.

Q. At the time you made another survey there in 1887 did you go to that south center monument?

A. Yes, sir.

292 Q. Who was with you this time?

A. Mr. Brewster Cameron and Mr. Buehman, the photographer.

Q. Did Mr. Buehman take any photographs?

A. He did.

Q. Of what?

A. The south center monument.

Q. The monument you took for your first survey of this grant when Mr. Richardson took you there?

A. Yes, sir; the same monument. That is the same one; I am satisfied it is the same monument.

Q. Where did you go from there on that first survey?

A. From there we measured north 200 cordels of the south center monument, and there we turned at right angle and ran due east on the edge of the mesa at the old ruins of the San Rafael ranch, or whatever it might be.

Q. Why did you run north 200 cordels?

A. That was the calls of the expediente.

Q. Did Mr. Richardson say anything about what these ruins were called, or that he knew?

A. No, sir; I do not think he did. I do not think he knew much about that country at that time.

Q. In running north 200 cordels did you find any other ruins before getting there?

A. No; we passed by some old ruins near the boundary line.

Q. Did you find there any other houses?

A. I think there was a house; I can tell by the field notes.

Q. Are these your field notes?

A. Yes, sir; these are the joint field notes of the survey made at that time by Mr. Howe and myself; 87 chains we came to a house running from the south center monument.

Q. Where would 87 chains be about on that map?

A. Down here near the boundary line.

Q. That is about a hundred cordels, is it not?

A. Yes, sir.

Q. What was the character of these buildings?

293 A. These buildings were there in 1875 when I came across. There were some Mexicans in these buildings.

Q. Were you there in 1875?

A. Yes, sir; I came across there in 1875 from the Huachuca Mountains, and I came up the Patagonians.

Q. People living in the buildings, were they?

A. Yes, sir.

Q. Was the buildings in ruins?

A. No, sir; the buildings were not in ruins.

Q. Have you seen them since?

A. Yes, sir; we passed there a quarter of a mile in coming across the country, but there was a ranch there at this time I am satisfied.

Q. Did Mr. Richardson tell you that these buildings where these Mexicans were living was the center of the grant?

A. No, sir; I do not think he said anything about it; I am satisfied he did not.

Q. What did you do after getting into these old ruins?

A. If I recollect, after we got into the ruins on the survey in 1880, after going 5 miles 16 chains then we built a monument there—built a small monument.

Q. Where did you go from there?

A. Then ran east, I think, 400 cordels from the center of the San Rafael grant where the old ruins were and could not find any monument. We found nothing in the end of the measurement, but we never crossed the Potroro and there are no monuments on this side; I mean 200 cordels.

Q. Do you mean 200 cordels every time you said 400 cordels?

A. Yes, sir; that is what I meant. Then we came back and ran north 200 cordels.

Q. Where did you go then?

A. Then we went on this mesa here and we searched there all over that country for that monument, and we took this Saddle Mountain for the Penasco; this Mr. Scott we took along told us that the Penasco was a big rock—that Andreas down at Santa Cruz told him that the Penasco was a big rock.

Q. Does it look like one?

294 A. It looks something like one, and we could *could* not find this monument, this north center monument that we were looking for. This Saddle Mountain I never believed was the Penasco. We had no idea that was the Penasco, this Saddle Mountain.

Q. Why?

A. Because it means a big rock, probably a hundred or a hundred and fifty feet high. Mr. Richardson pointed to the Penasco and said that is what I call a Penasco there.

Q. How far can you take a horse up on this Saddle Mountain from the north side?

A. I do not know. I presume you can take a horse up there, but I do not like to say.

Q. What does that photograph represent, Plaintiffs' Exhibit F 28, if you know?

A. That photograph, I presume, represents the Penasco; I never went close to that Penasco.

Q. Did you and Mr. Buchman take a photograph of the Penasco?
A. No, sir.
Q. Describe the rock that was pointed out by Mr. Richardson that he called a Penasco.
A. That rock is a great big rock standing way up outside of the other rocks; away from it it looks to be two or three hundred feet high, a big pinnacle standing right up.
Q. From what direction would you see that and from what distance?
A. You see that from the southeast and from the south, but I do not know—I think you can see it from the north; it is right at the end of this range.
Q. What is the next thing you did after running 200 cordels north?
A. We searched the monument; we did not find anything.
Q. Did you find any monument around towards the Penasco?
A. No, sir; we could not find any; we were taking this hill for the Penasco—the Saddle Mountain. These Canelo hills which is the point of the Huachucas, we were taking for the northeast corner of the grant.
Q. From the 200 cordels north you mean you could see the Huachucas?
A. We could not see anywhere from here; we cross the range
295 of mountains to get up here we could see it?
Q. Can you see it from the top of El Caloso. Have you ever been there?
A. Yes, sir; but not on top of this mountain. From these mountains I believe you could.
Q. Can you see it from the San Rafael Ranch house?
A. No, sir.
Q. Can you see it from the vicinity of the San Rafael Ranch?
A. No, sir.
Q. What did you do after searching for that north center monument?
A. We came back and measured from the south center monument to the southwest monument in the San Antonio Pass. Mr. Richardson went on horseback to this corner—to the southwest monument. I went back to a point and triangulated, to that monument so as to locate it.
Q. How do you know they went to it?
A. They told me they had been there, and I believed them. I knew that pass before that.
Q. When was the first time you had been there?
A. That was in 1875.
Q. Where did you go to next?
A. I came up to the red hill looking for that monument, and discovered it at the foot of that red hill at the end of the Patagonia Range. The red mountain is west of a gulch, and this red mountain stood out prominently.
Q. Do you remember whether Mr. Richardson said anything about such boundary monument being the monument at the foot of that hill?
A. I suppose he did; I do not remember. There was no diversity of opinion as to that being the point; and when I came back I made inquiries about that point, the red mountain, being between the Penasco and the Sonoite mountains, of old inhabitants—old residents.
Q. Where are the Cayateno Mountains with reference to that red hill?
A. They are in a general direction from the red mountain west-northwest.

Q. Have you ever been at the north center monument of this grant?
A. Yes, sir.

296 Q. Standing in the immediate vicinity of the north center monument of the grant, how can you see the red mountain from it?

A. I am satisfied you can; yes, sir.

Q. Do you remember the calls of the title papers as to that?

A. Yes, sir.

Q. What is it?

A. Standing in an open place between the Penasco and the Sonoite mountains.

Q. What is the appearance of the red mountain looking from the vicinity of the north center monument towards it?

A. It has the appearance of a red mountain. I got a photograph of this range at home that was taken from the Sonoite—taken from here.

Q. From the north center monument looking towards the red mountain, can you see the Sonoite Mountains?

A. I think you can; they are a very high range of mountains.

Q. Do you remember whether you can or not?

A. I believe you can; I am perfectly satisfied you can.

Q. How long since you were up there—the north center monument?

A. I was there in 1887, 12 years ago.

Q. That was the last time you were there?

A. Yes, sir; I am perfectly satisfied you can see this range; they are very tall.

Q. Your opinion is based on the fact that these are high mountains?

A. Yes, sir.

Q. Where did you go from the red mountain? What did you do after that, that time when you were there in this survey in 1880?

A. That finished the survey then, as far as that survey is concerned.

Q. Did you find any north center monument?

A. No, sir.

Q. Did you find the east center monument?

A. No, sir.

Q. Did you look for the place that complied with the description of the title papers for the east center monument?

297 A. No, sir; we ran north 200 cordels and then stopped.

Q. Did you look for the east center monument at that time?

A. No, sir.

Q. Did you find any El Carricillo spring at that time?

A. No, sir; I went there afterwards with Mr. Richardson and Mr. Hewson.

Q. When was that?

A. That probably was in the latter part of 1880 or 1881. I think it must have been 1881.

Q. After you had made this survey?

A. Yes, sir.

Q. You went there for Mr. Richardson?

A. Yes, sir.

Q. You knew where the spring was?

A. I did. I went to the point known as Igo, probably a mile from that monument, and found the monument at the north end of the Sierra del Cobre or Huachuca Mountains.

Q. This El Carricillo spring or Igo spring—how did you come to go there?

A. I went there to locate this monument.

Q. How did you come to go to that particular spring—the Carricillo spring?

A. Well, I suppose that was the spring that was called for in the expediente.

Q. Did anybody tell you at that time?

A. I do not recollect whether they did. We came down here and Mr. Richardson took us to monument number 21 of the United States, between Mexico and the United States, and he said that was the southeast corner of the grant. That was the boundary monument between the two countries. From there I came as far as the Canelo Range, and Mr. Heine and Mr. Richardson in a buckboard overtook me and we came to the Carricillo spring.

Q. Did you find the east center monument in going there?

A. No, sir.

Q. Where did you and Mr. Richardson go from the Carricillo spring?

A. I think we quit then. I do not recollect except going home.

Q. Did you ever make a survey of any of the boundaries of the grant after that?

A. Yes, sir; I have.

Q. When?

A. 1887.

298 Q. Where did you first go, then, and what did you do?

A. Having already got my measurements made out from the center monument to the south center monument of the grant, I took up the line and ran it north until I got within a mile of this north center monument—if I recollect, about a mile—then I ran down and connected with that monument. I chained the whole grant then from the south center to the north center.

Q. What did you find there?

A. I found a tree—pile of stones and a tree.

Q. Where were the stones with reference to the monument?

A. I think they were around the tree, if I recollect right. I was never there but that once and never been there since.

Q. Can you tell whether you ever saw a place represented by this photograph, plaintiffs' Exhibit F 27?

A. I believe that is the place; still, I could not testify and swear to it.

Q. Does that look like the rocks you saw?

A. I could not say. It was a big tree surrounded by rocks—a big oak tree.

Q. Where was it?

A. It was there, immediately adjoining the tree.

Q. From the north center monument could you see part of the Sierra del Cobre Mountains, at the foot of which the monument stands which has been taken as the northeast monument of this grant?

A. If I recollect, this whole country around was an open country.

Q. Can you see that point?

A. Up here you mean, from the north center monument to the northeast monument; no, sir.

Q. What was the country immediately adjoining the tree towards the south—immediately adjoining it?

A. I found an arroyo that ran towards this oak tree from the Penasco—the one marked Penasco on the map. There is a very marked broken country south from there pretty near impassable.

Q. Going from the north center monument to the Penasco, you mean?

A. Yes, sir; all this country here.

299 Q. What made you go to the point you did when you were making this survey in 1887; what made you go as far as you did from that north center monument?

A. We looked, spent time looking here down around the horse corral and on the edge of the mesa where the water runs south, and Mr. Cameron told me there was a monument on the edge of the mesa running towards the Penasco, and the minute I got over there I said I am perfectly satisfied that is the point because that answered the calls of the expediente.

Q. What did you do next to that?

A. I surveyed from the north center monument after reaching that; I think Mr. Brewster Cameron and I went to locate this monument, the east center monument; Mr. Brewster Cameron went in a wagon; he was going to take a photograph of it.

Q. How did you get up there?

A. We went up that canada; we came this way right there at the monument, and I believe Mr. Brewster Cameron took a photograph of the monument.

Q. Had you ever seen that monument before that?

A. No, sir; not that I ever remember of.

Q. Did Brewster Cameron tell you where it was?

A. I do not know; I think some old Mexicans knew where it was.

Q. Now, describe that monument and the character of it.

A. Well, it was rock; that monument was an old monument built of stone; but if I recollect it was a large monument on a mesa on the east side of the mesa.

Q. On which part of that mesa; where did the mesa commence as regards the east or west; where was the monument with regard to the mesa; on which side?

A. I think it was on the edge of it; I think on the west edge of the mesa.

Q. Can you remember as to whether standing at that monument you can see the vicinity of the Old San Rafael ruins?

300 A. I am satisfied you could not; I do not think we could from my recollection of the country.

Q. Do you recollect whether you could see the ruins themselves?

A. No; well, you might.

Q. Where did you go next?

A. To the southeast corner, the Jaralito.

Q. Is that the same as the northeast monument of the Presidio?

A. Yes, sir.

Q. What did you find there?

A. We found a very big monument.

Q. When was that?

A. That was in 1887.

Q. Did you say there was a large monument there?

A. Yes, sir; very large monument.

Q. Where did you go from there?

A. From there I measured from the point here marked N. E. Mont. Presidio; I chained to the south center monument.

Q. What did you do after that?

A. I believe that finished it, the survey. I had triangulated here before; we got there and finished the survey.

Q. Did you find the El Caloso?

A. There was never any question about it as to that being the point.

Q. Can you see that from the old ruins?

A. Yes, sir.

Q. Is there any other lime hill that can be seen from the old ruins or that vicinity?

A. I do not know of any other lime mountain in the whole country.

(We offer in evidence a copy of a contract and deed between R. R. Richardson and Colin Cameron, dated May 9, 1883, recorded in the office of the recorder of Pima County at the request of Colin Cameron on August 21, 1883, in book 8, page 779, and following, marked "Plaintiffs' Exhibit F 51.")

Q. Mr. Roskruge, I hand you plaintiffs' Exhibit F 42; do you recognize that photograph?

A. Yes, sir.

301 Q. What is that?

A. That is a photograph of the east center monument of the San Rafael de la Zanja private land claim, on the edge of the mesa on the east side of the Potrero Canada.

Q. Do you know when that was taken?

A. Yes, sir; it was taken when I made that survey of 1887. That is myself standing by the transit with the book in my hand.

Q. Who is the party on horseback on the right-hand side of the photograph?

A. I think it is Brewster Cameron.

Q. Who is the one on the left hand?

A. Mr. Brewster Cameron's son.

Q. I hand you plaintiffs' Exhibit F 43. Is that a representation of anything you have ever seen?

A. That is a representation of Washington Hill, or El Caloso.

Q. Are you able to recognize it from the photograph?

A. I do.

Q. Did you ever make any other survey of this grant, or any part of it, than these two you have mentioned?

A. I made a survey down in that valley in September, 1880, but I could not consider it a portion of that grant. I will explain what I did: Some time in 1880 Mr. Wasson, who was the surveyor-general of this Territory, asked me if I knew Slaven's ranch, and to make a survey running from the post which I would find in the cienega north 200 cordels and then west 200 cordels, and show the relative position of the town of Harshaw, which post I have marked on my map Cienega at La

Zanja with S. R. Z. No. 1, I think it is, and from that I ran 200 cordels north and 200 cordels west, and came out on this road probably about a mile and *mile and* a half from Harshaw, the road from San Rafael to Tucson.

Cross-examination by Mr. POPE:

Q. You say you went to this east center monument in 1887?

A. Yes, sir.

Q. That is on a mesa; it is not to the east of the Potrero Canada?

302 A. Yes, sir; on the edge of a mesa on the east of the Pot'ero Canada.

Q. You got some mesas mentioned there on your map?

A. Yes, sir.

Q. How do these mesa lands run north and south of that point?

A. They run down about here, as near as I can tell.

Q. Some distance south and north of the east center monument?

A. Yes, sir.

Q. Just about as you got the mesa lands there?

A. Yes, sir.

Q. And that Potrero Canada, where is that with reference to this mesa?

A. The main canada is a mile, I should say, from the mesa.

Q. From your east center monument?

A. Yes, sir.

Q. And it runs about there north and south?

A. Yes, sir.

Q. The mesa follows along the east side of that canada for some miles south from your east center monument?

A. That I would not say; I believe it does.

Q. You say you made your first survey in 1880?

A. Yes, sir.

Q. You say that that survey was made for Mr. Wasson at that time?

A. Yes, sir.

Q. That was the two lines that you ran for Mr. Wasson, and was before you ran the lines for Mr. Richardson and Mr. Scott?

A. Yes, sir.

Q. The next survey you made of this tract was in the same year 1880, for Mr. Richardson and Mr. Scott?

A. Yes, sir; October, 1880.

Q. And the third survey was in 1887?

A. Yes, sir.

Q. Are these the only surveys or reconnoissances of this grant that you have made?

A. Yes, sir; when I was down with Mr. Richardson *down* to the southeast corner I went for this line, but did not make any survey.

Q. After you made this survey in 1887, have you ever been down on that tract again for the purpose of making a survey?

A. I do not think I have been there since to make any surveys.

303 Q. Have you ever been down to the southeast corner of this tract since then?

A. No, sir.

Q. This tract, as located by you according to the natural boundaries, is included in these solid black lines?

A. Yes, sir.

Q. When was that survey completed and platted?

A. In April, 1887.

Q. In 1880 you made a survey for Gen. Wasson?

A. Yes, sir.

Q. Was that prior to the survey or after the survey of Allis?

A. After.

Q. Did you find a stake at the center monument?

A. I found the post in the cienega; it is in a marsh; right in the middle of that cienega.

Q. About how far is that from the center monument which you took in the survey of 1887?

A. Probably three-quarters of a mile.

Q. It is about three-quarters of a mile north of that center monument of 1887?

A. Yes, sir.

Q. You on that survey ran north 200 cord's, did you not, in 1880, for Gen. Wasson?

A. Yes, sir.

Q. Or 5 miles and 16 chains?

A. Yes, sir.

Q. Now, you found at the end of that an oak tree, did you not?

A. Yes, sir; I came to an arroyo, on the right bank of which I found an oak tree, blazed, with a cross on it.

Q. And you ran from there, you say, 200 cord's towards the west?

A. Yes, sir.

Q. What is the character of the country at or about the point where you found this blazed tree with a cross on it?

A. It is rolling land.

Q. Mesa lands?

A. No, sir; it is a kind of rolling lands.

Q. How far from the river is it—the place at which you found this blazed tree with a cross on it?

A. I could not tell exactly how far it is from the river.

Q. Will you indicate on that map, as to your best judgment, that point where the oak tree was with a cross on it?

A. Marked by the letter R.

Q. Did you report that to Gen. Wasson?

304 A. Yes, sir; he has got my report.

Q. And that tree is on the edge of an arroyo?

A. Yes, sir.

Q. You say that arroyo ran in the Santa Cruz Valley?

A. Yes, sir; running from the east and from the west.

Q. The arroyos come in from the north and the northwest and from the northeast into the Santa Cruz Valley?

A. Yes, sir.

Q. There are lomas in the midst of these arroyos?

A. Yes, sir; I call that rolling country; it is not very broken; this country is level probably for three or four miles and then, if I recollect, I got into rolling country with oak timber.

Q. Where was the first oak timber you come to going north?
A. They were scattered timber.
Q. Oaks?
A. Yes, sir.
Q. And where were they with respect to the valley of the Santa Cruz?
A. They were scattered all along.
Q. On either side of the valley?
A. Yes, sir.
Q. Now, I will get you to look at this plat and state whether or not that represents a correct plat of your sketch constituting this survey for Surveyor-General Wasson?
A. You must understand that there was nothing official about it.
Q. You made it?
A. Yes, sir.
Q. Is it correct representation of your survey made by you for Mr. Wasson?
A. This the map, I presume, I sent in with my report; that is a correct map; yes, sir.
Q. I will get you to look at this report signed George J. Roskruge, September 7, 1880, and state whether or not that is a correct transcript of your report.
A. Yes, sir; this is a copy.
Q. Signed George J. Roskruge, U. S. deputy surveyor; you signed that?
305 A. Yes, sir.
Q. You signed that George J. Roskruge, U. S. deputy surveyor; that is a copy of your report and the result of your investigation and that is your handwriting?
A. Yes, sir.
Q. And Mr. Wasson was then the surveyor-general of the Territory of Arizona?
A. Yes, sir.
(We offer this map in evidence. Defendant's Exhibit No. 1. We offer this report in evidence. Defendant's Exhibit No. 2.)
Q. Did you at that time go over to Washington Camp or to Harshaw?
A. Yes, sir.
Q. I will get you to state where Harshaw was with respect to this survey that you made for Mr. Wasson.
A. Outside of the exterior boundaries, probably a mile and a half to the northwest.
Q. Who was living at Harshaw at that time?
A. That was a mining camp.
Q. How many were there in that mining camp?
A. I could not tell; probably a hundred or two or three hundred men.
Q. Pretty good sort of a mining camp?
A. Yes, sir.
Q. Pretty well located up with mines?
A. I presume so.
Q. A good many locations?
A. Yes, sir; a good many.

Q. And how about Mowry Camp; did you go to Mowry Camp?
A. I did not go at that time.
Q. Was anybody at Mowry?
A. That I could not state; I was there in '75 when I came up.
Q. How many men were there in '75?
A. Probably a dozen.
Q. How far is that outside of your boundaries as you surveyed it?
A. Probably a couple of miles.
Q. And Washington Camp, did you go down there?
A. About two miles; probably outside a couple of miles.
Q. Did you go to Washington Camp in '80?

306 A. No, sir.
Q. Were you there in '75?
A. No.

Q. When was the first time you were at Washington Camp?
A. In '79.
Q. How much of a camp was it then?
A. When I was there probably ten or a dozen people there, if I recollect right.
Q. There were a number of mining locations?
A. I presume so.
Q. Were you there surveying then?
A. No, sir; prospecting.
Q. Now, you said you were in that country in '75 and '79; were you at Harshaw in '75?
A. Yes, sir.
Q. Were there many locations and people working these locations?
A. Yes, sir; they were big mining camps; yes, sir.
Q. In making your reconnoissance with Mr. Richardson in '80 you said you went to what was known as Saddle Mountain?
A. Yes, sir.
Q. Who went with you to Saddle Mountain?
A. Mr. Richardson and myself.
Q. How did you happen to go there?
A. We went to see if we could not find the penasco; this fellow Scott always kept telling us that the top of that peak was the penasco, and he was misled by the people at Santa Cruz; and Scott said that was the penasco; but he did not make me believe it was the penasco.
Q. You did not beli've what they said?
A. No, sir; I went to the Saddle Mountain with a view of finding some other penasco—that is what I call a penasco.
Q. Mr. Richardson did not tell you that the mountain that you got laid down as the penasco was the penasco?
A. No, sir; he did not know anything more about it than I did.
Q. And this Saddle Mountain looking from the south up the valley presents what kind of appearance?.
A. You see the top of it.
Q. The south side is steep, is it?
A. Yes; it is a pretty steep mountain.

307 Q. Now, when you are looking at this Saddle Mountain from the south part of this grant, from the center monument, its appearance is that of being a very steep mountain?

A. Yes, sir; it has.

Q. From the lower part it has the appearance of a rock?

A. Yes, sir.

Q. Of a very steep, high rock; high and steep on the south side?

A. Yes, sir; probably three or four hundred feet high.

Q. Where do you first see that Saddle Mountain, as you call it, from the south?

A. That I could not tell.

Q. As a matter of fact people away down below the line, in the State of Sonora, can see that Saddle Mountain?

A. I have not been there for such a long time I really could not say.

Q. You do not pretend to say that you can see the Penasco from your south center monument, do you?

A. No, sir; you can see it probably from the south boundary, seven or eight miles, but you can see it from the edge of the mesa.

Q. That Saddle Mountain is visible throughout?

A. Yes, sir.

Q. How is this El Caloso that you referred to as being prominent?

A. The Washington Hill; that is rather a prominent landmark in that part of the country.

Q. How far can you see it from the east and south?

A. I presume from the east you can see it from the Huachuca Mountains; from the west you can see it from the Patagonias, and from the south—that I could not tell.

Q. How is it as to being a high hill or low?

A. It is high, steep hill.

Q. Which one of these surveys do you claim to have made as an officer of the Government, as county surveyor, in behalf of the public?

A. The last one.

Q. 1887?

A. Yes, sir.

Q. Did the public pay you for making that survey?

A. No, sir.

Q. Mr. Cameron paid you?

A. Yes, sir.

308 Q. As county surveyor no officer called on you to make this survey?

A. No, sir; the legislature made the law.

Q. They passed the law?

A. Yes, sir.

Q. That is, the legislature made the law regulating the county surveyors and what he should do and charge for doing; the law regulates these fees?

A. Yes, sir.

Q. Mr. Cameron paid them?

A. Yes, sir.

Q. And he employed you to make this survey.

A. Of course he did; yes, sir; he employed me as county surveyor to make this survey.

Q. He employed you to make it and he paid you personally?

(Objection that it cuts no figure if he did.)

The COURT. You have spent time enough on that.

Q. When was it you went to the southeast corner with Mr. Richardson and Henry Hewson?

A. I think it was in '82.

Q. What points did you go to at that time?

A. On the boundary line, and from there, from monument number 21 of the boundary line between the United States and Mexico, and went north to the point of the Canelo Mountains, and to the north point of the Huachucas, and the next day we came to Mr. Hewson's place.

Q. On that survey did you find any monument at the northeast corner?

A. No, sir.

Q. Could not find any?

A. No, sir.

Q. You did not find any, as a matter of fact?

A. No, sir; this one that Mr. Richardson supposed to be number 21, he supposed that was a monument, but it was not.

Q. How many of these lines did you measure on your survey of '87; your exterior lines?

A. I measured from the center, at the old center, at the old San Rafael ruins north to this north center monument; then I
309 came through the Jaralito to the south center monument; that was the only measurements; the balance were by triangulations.

Q. Were your measurements and triangulations correct?

A. I believe they were correct; yes, sir. I did my utmost endeavor to make them correct.

Q. When you were down there in '80, the first time, did you find any monument at the old—what is laid down here as the old San Rafael ruins?

A. No, sir; I went out to Slaven's ranch, to the post to the center and measured north.

Q. What do you mean by Slaven's ranch?

A. Slaven's ranch is right here at the old cienega, the place laid down as La Zanja.

Q. At that time, or subsequently, you went there to measure a line run by Mr. McLaughlin?

A. No, sir.

Q. You do not know anything of his having been around to these monuments?

A. The only thing of Mr. McLaughlin's survey; that is, a line he ran—I think it comes down between townships 17 and 18 east. In his field notes, where he comes down here—he crosses the north boundary of that grant—is many miles from the northeast corner. That is in his field notes in the surveyor-general's office. I got that when I was compiling my county map and found that out.

Redirect examination by Mr. HENEY:

Q. These dotted lines on this map—did you place these there?

A. Yes, sir.

Q. Do they purport to be an accurate representation of the point where you found the monument you testified about?

A. I presume that is where I found the monument.

Q. Do those dotted lines purport to be an accurate map of it?

A. Yes, sir.

Q. Did you survey there lines or measure them—these dotted lines?

310 A. No, sir; I made my observations from these points I knew to be correct, and calculated where that measurement would be.

Q. Did you use the same degree of care that you did in the other monuments?

A. I presume I did.

Q. Did you mean to state that the people of Santa Cruz told Scott that that point you called the Saddle Mountain they called the Penasco?

A. No, sir; merely this: That this man Scott that was with us represented Alfred A. Green, supposed to be the owner of the grant, argued the question that that Saddle Mountain was the Penasco.

Q. I hand you the plat or map marked Defendant's Exhibit Number 1. Was that map made by you representing the survey which you made running 200 cords north from the Allis post and 200 cords west from your north point?

A. Yes, sir; it is.

Q. Do the lines representing an arroyo at the point here, marked blazed tree, at the end of the 200 cords running north, the black line, represent the direction in which the arroyo where you found that tree run?

A. Yes, sir; I think it does.

Q. Did you find any rocks at the bottom of that blazed tree?

A. No, sir.

Q. None at all?

A. Not a rock. I hunted and hunted for rocks, and I could not find any monument there, either.

Q. In which direction does that arroyo situated at that blazed tree run?

A. Southeast.

Q. How does it run going in the other directions?

A. Northwest.

Q. From that point at the blazed tree it runs northwest, does it?

A. It comes from the north and runs towards the southeast.

Q Then does that arroya run towards Saddle Mountain?

A. No, sir.

Q. Does it run towards the Penasco?

A. No, sir.

Q. Why?

A. None of these arroyos on the edge of the mesa shown on this map that run that way. They all run south; south or southwest.

311 Q. Will you kindly mark on the map about the relative position of Saddle Mountain, and mark it with the letter ?

A. I believe that was marked red hill, that Penasco, and it is somewhere in that vicinity where that high hill would be—mountain—on the edge of the mesa; I think here—that is it marked here red hill. That is the hill that I think we saw, coming up from the south. That is what we marked the prominent red hill.

(The witness did not mark Saddle Mountain with the letter A as requested.)

Q. How far is that from the point marked blazed tree on Defendant's Ex. No. 1?

A. A little over 4 miles west of it.

Q. From Saddle Mountain to the place marked red hill?

A. Yes, sir.

Q. Did you find in running from the point marked blazed tree, 200 cords west on the end of that line, a red mountain?

A. No, sir; did not find any mountain at all; came right out to the rolling hills, probably I should say three or four miles from the mountain.

Q. Is the object marked prominent red hill on this defendant's Ex. No. 1—does that object lie in an open place, or stand in an open place, between the Penasco and the Sonoite Hills?

A. No, sir; it don't stand anywhere near it. It is away south of it.

Q. As a matter of fact, is the Penasco west of that?

A. The Penasco is north of it a couple or three miles; a couple of miles, anyway.

Q. Saddle Mountain is to the south of this prominent red hill, even if it does not lie between the Penasco and the Sonoite Hills, and even if it does not stand in an open place?

A. I do not know about that. It is right on the edge of the mesa. It may be in an open place. I do not recollect. There is a mesa coming up there to the south, and I think this mesa running right in here runs out from the mountains and then runs along the western
312 base of these broken hills to the north and west of it and northwest.

Q. If that is the red hill, the part marked Saddle Mountains—if that is the red mountains called for in the title papers——

A. There is no red mountains. There is nothing but a red hill.

Q. Well, if it is, is there any Penasco between that point and a point 200 cords north of the center of the grant?

A. From the way you mention it, there would be no big rocks anywhere in this vicinity running by sheep ranch and horse corral.

Mr. Pope:

Q. This Saddle Mountain is north of west of this oak tree which you spoke of?

A. A little north of west; yes, sir.

Q. And this arroyo that you have got delineated here runs from northwest to southeast?

A. Yes, sir.

Mr. Heney. We now offer in evidence this Roskruge map, marked "Plaintiffs' Exhibit F 52."

We also offer in evidence the testimony of Jose Maria Montoya, Alejandro Apodaca, Casus Dominguez, and Xavier Domingues, taken before the surveyor-general of Arizona, whose deaths we proved, marked "Plaintiffs' Exhibit F 53."

Concepcion Elias, sworn on the part of the plaintiffs, testified upon direct examination by Mr. Heney as follows:

Q. Give your name and age and residence.

A. Concepcion Elias; 68 years old. I live at Santa Cruz.

Q. Sonora?

A. Yes, sir.

Q. How long have you lived there?

A. I was born there, and that is my country.

Q. How much of the time since you were born there have you lived there?

A. I have always lived there.

Q. Do you know the ranch of San Rafael de la Zanja?

313 A. I know it very well; perfectly.

Q. Did you know any of the parcioneros mentioned in the title papers of that grant of San Rafael?

A. Yes, sir; I knew several of them; my father was one of them himself.

Q. Did you know Ramon Romero?

A. Yes, sir.

Q. Where did he live?

A. He lived at Santa Cruz; he went to California and never returned.

Q. How long ago was that?

A. I think it was in '49; it was during the exodus to California; I think he died there.

Q. Did he hold any office in Santa Cruz that you know of?

A. No; he was a farmer.

Q. Do you know how the San Rafael grant was paid for when it was originally purchased?

A. I do not know how much they paid; I do not know how; I know they bought it.

Q. Do you know whether your father paid any part of the purchase price?

A. Yes, sir; that is the same portion that I myself sold.

Q. What was the earliest date at which you can remember seeing anybody living on the San Rafael ranch?

A. I have always known it as such; it was already settled when I was born; it was settled with a lot of stock; it is very near.

Q. Was anybody living on the ranch itself?

A. They lived at the ranch.

Q. Where was that?

A. Every ; all the owners of the ranches lived on the ranch; I myself afterwards lived in it.

Q. What year do you remember first seeing owners living on the ranch?

A. When I was about 6 or 7 years old; we would go out to the ranch because it was very near; I knew it settled by various families.

Q. Where were the houses in which they were living then?

A. They were there, coming this way, at various place' of the ranch where they settled.

314 Q. Where were they from La Noria?

A. Near La Noria; there was one in the center of the valley towards the north from La Noria, or in the center of the valley towards the east where the slope comes down.

Q. How many cattle were running on the ranch when you first knew about it?

A. There was large numbers of stock when I knew it.

Q. How many, about?

A. About the year '39 or '40 there were large numbers of stock there still.

Q. About how many?
A. I can not state how many, but there were large numbers.
Q. Were there as many as a thousand head?
A. I think there were more than twenty thousand.
Q. Do you know any of the monuments of the San Rafael grant?
A. Yes, sir.
Q. What ones do you know?
A. You mean the corners?
Q. Yes, sir.
A. The corners of the ranch that I know are El Carricillo, and Cerro Colorado, San Antonio and Jaralito, San Antonio Bolanta; these are the four corners that I know; the other corner monument is San Antonio and Bolanta.
Q. How many does that make?
A. That is four.
Q. Do you know the south center monument of the grant?
A. Do you mean the center monument?
Q. No; south center.
A. It is a high peak that rises above the Washington Camp between south and east; that is the monument—that is what they call the monument.
Q. What monument is that?
A. It is a peak, and that stands for the monument, as the people of the ranch understand it.
Q. Do you know of a monument at the mouth of the Potrero?
A. Yes, sir.
Q. Who first showed you that monument?
315 A. The old people, owners of the ranch; that is on a detached hill or little hill.
Q. At what point?
A. At the mouth of the Potrero, where the valley comes out.
Q. Did you ever go to that monument with Mr. Bonillas?
A. Yes, sir.
Q. Is that the monument you showed to him as a monument of the San Rafael grant?
A. Yes, sir; I showed it to him.
Q. Do you know where San Antonio Pass is?
A. Yes, sir; you mean the corner.
Q. Do you know where the pass is?
A. Yes, sir.
Q. Who told you that they called that place San Antonio Pass?
A. That is a very ancient name; they commonly called it the Pass of San Antonio.
Q. Have you always heard it called that since you can remember?
A. Ever since I was born that is a common name; that is a pass.
Q. Do you know two little hills that are near the pass?
A. There are many hills, but at that pass where that monument is there are two small peaks.
Q. What monument is that?
A. That is at the corner of San Antonio.
Q. Is that a monument of the San Rafael grant.

A. Yes, sir.

Q. Did you show that to Mr. Bonillas as a monument of the San Rafael?

A. Yes, sir; I showed it to him.

Q. Who told you that was a monument of the San Rafael?

A. The old people there, among them my father himself, that the lines of the ranch reached there, and from there the lands of the neighbors began to start.

Q. The lands of the Santa Cruz reached up to that point, do you mean?

A. That is, the commons of the town reached up to that point.

Q. Did the commons of the town reach up to that monument at the mouth of the Potrero also?

A. Yes, sir; there were two leagues of common lands in the town.

316 Q. Do you know where the old San Rafael ruins are?

A. Yes, sir.

Q. Where are they?

A. They are at the center point; and on a table-land stand the mounds of the ruins of an old town and near it stand also the ruins of an old town.

Q. Do you know where La Zanja is?

A. Yes, sir; that is the center of the ranch?

Q. Are these old ruins of San Rafael down the river or down the valley from La Zanja, or up the valley?

A. They are on the top of the little table-land.

Q. In which direction from La Zanja?

A. They are to the southeast, on the top of the little table-land.

Q. How far from La Zanja are they?

A. They are very near; I think they must be about 6 or 7 hundred varas, more or less.

Q. How long have you known these ruins as ruins?

A. I do not know that town; I do not know what people lived there.

Q. Who told you that they were the ruins of old San Rafael?

A. The old people told me. That is the place where they settled originally, and it was abandoned on account of the Indians.

Q. The old people of Santa Cruz?

A. Yes, sir; the owners of the ranch.

Q. How far did the ranch extend towards the north?

A. To what they called Carricito, adjoining with the Babocomari ranch on the north.

Q. Where is Carricito?

A. At the edge of the Cobre Mountains at a spring.

Q. Are these the mountains they now call Huachuca Mountains?

A. It is the same mountains as is called Huachuca, but the mountains are divided by box canon, and the further portion is called Huachuca and this other portion is called Cobre Mountains.

317 Q. Is that El Carricito you spoke of a spring?

A. Yes, sir; there is a spring there.

Q. Does anybody live at that spring now?

A. There is a farmer there now.

Q. Who?

A. Mr. Igo. I believe he is the owner; he lives at that spring.

Q. Did you show that spring to Mr. Bonillas as the Carricito Spring?

A. Yes, sir.

Q. Who told you that was the Carricito Spring?

A. The owners of the ranch; the old people would commonly call it the Carricito.

Q. Do you know where the monument of the grant is at that spring, the northeast monument?

A. Yes, sir; it is at the edge of some peaks; it is at the foot of an oak tree that is between the Carricito and the Red Hill or Cerro Colorado, on a line between those two points.

Q. Do you know the northeast corner of the grant?

A. I am speaking of the north.

Q. Describe that place where the monument is on the north.

A. It is from the center point on the north.

Q. What is the monument like? What is it?

A. It is an oak tree, and at the foot of that tree there is the monument.

Q. From this tree of that north monument can you see the Red Mountain?

A. Yes, sir; there is an opening between two mountains, and the Red Hill or the Red Mountain is seen from there.

Q. Where is this tree with the monument and what kind of land is it? Where is it?

A. It is in a draw at the edge of an arroyo running to the east.

Q. Do you know the Penasco—the place called the Penasco?

A. Yes, sir; that arroyo runs to the north—to the Sonoite.

Q. Do you know a place called Penasco?

A. Yes, sir.

Q. Does that arroyo run toward it?

A. Yes, sir.

318 Q. What is that Penasco? What does it look like?

A. It is a high, very yellowish, round-like peak.

Q. I show you plaintiffs' Exhibit F, 28. Does that look like it?

A. That is the Penasco.

Q. How long have you known that as the Penasco?

A. Almost every day in traveling through the ranch there, because it can be seen from the ranch.

Q. Who told you it was called the Penasco?

A. The old people used to call it that. They called it Penasco of Sonoite, because it runs to Sonoite.

Q. The old people of Santa Cruz, do you mean?

A. Everybody in the settlement calls it the Penasco of Sonoite.

Q. Do you know a place called Red Mountain on that grant?

A. Yes, sir. There also is a road adjoining; at the foot of that mountain is the road that is traveled.

Q. Do you know the road from Harshaw to Crittenden?

A. That is the same road; that is the same road that comes by the Red Mountain.

Q. Where is the Red Mountain on that road?

A. It is to the left going from Harshaw toward Crittenden; it is to this side going to the west.

Q. It is to the left side of the road going from Harshaw to Crittenden?

A. Yes, sir.

Q. Do you know the Canada de Potrero?

A. Yes, sir.

Q. Where does that commence?

A. Comes out from the Huachuca Mountains.

Q. And where does it end?

A. That monument is at the place where the south center monument is, at the place where the mouth of the Potrero comes out into the Santa Cruz Valley.

Q. Do you know where the east monument of the grant is?

319 A. It is also in that draw at a very high table-land on the east side of the center point.

Q. How long have you known that to be a monument of the grant?

A. For many years; I lived many years at the ranch.

Q. Who told you that that was the monument of the grant?

A. The owners of the ranch themselves.

Q. What part of this land within the monuments of the land you have designated did the owners occupy?

A. I do not know what part; they used to say it comprised four sitios.

Q. What part of these lands in this place that you have designated were used for cattle?

A. It was commonly all over the valley.

Q. What part did the owners claim to own of this tract?

A. These lands between these four points that I have designated and running to the Babocomari lands and the lands of Terrenati.

Q. How were the Indians? What trouble, if any, did they have with the Indians in regard to occupying this ranch?

A. At the beginning they were not much trouble, but later on there was a good deal of trouble; with the cowboys they drove them away finally, these Apaches.

Q. When did that trouble with the Apaches commence?

A. That was in about the year '40 or '50 when they abandoned the place.

Q. Did the owners abandon the place on account of the Apaches?

A. Yes, sir; on account of the Indians they went to Santa Cruz.

Q. Where were you living then?

A. In Santa Cruz; I have never gone out of that place.

Q. Did you have any trouble with the Indians of Santa Cruz at that time and afterwards with the Apaches?

A. Very little from the time the boundary line was established; of the present time they do not molest us very much.

320 Q. From '40, from the time the owners of this grant came in the town to Santa Cruz, up to the time of the boundary did the people in Santa Cruz have any trouble with the Apaches?

A. There were not so many Indians; it is true that they killed some Indians, but we were not helpless as before.

Q. How far is it from Santa Cruz to La Noria?

A. It is two leagues.

Q. Do you know the place called La Noria?
A. Yes, sir.
Q. How long?
A. It is right by the side of the boundary line.
Q. How long have you known that place as La Noria?
A. I have known it ever since I was born; it has been called that way—it has been called that because there was a well at that point.
Q. Do you know whether there was a corral there at the time in early days?
A. There was at that time originally at that place of the well a very large corral that they used to call a common corral.
Q. Was La Noria attacked by the Indians in those early days?
A. Yes; many times.
Q. Did you know Governor Piscarro at that time?
A. Yes; I knew him very well.
Q. Did he ever live on the San Rafael ranch?
A. During the French intervention he was living at San Rafael.
Q. Whereabouts did he live? Where was his house?
A. At the very monument he built his house; at about ten varas from the monument.
Q. From what monument?
A. The boundary line monument; the international line.
Q. Are those houses there yet?
A. The mounds are there lying on the earth.
Q. Do you know where the Ranches de la Coches is?
A. Yes, sir.
Q. Was there any corral at that point when you first knew the ranch?
A. No; I do not know any corrals.
321 Q. Do you know the Viviano Spring, about two miles above the boundary line?
A. No, sir.
Q. Do you know where there are some ruins of houses about two miles north of the boundary line?
A. You mean at the valley of Santa Cruz?
Q. Yes, sir.
A. There are no other ruins except old San Rafael and New San Rafael. They were settled afterwards.
Q. Where is new San Rafael that was settled afterwards?
A. Perhaps you mean the Vivano ranch?
Q. Yes, sir. Was that what was called New San Rafael?
A. I know that place. That is in the valley of San Rafael. I settled myself there. Vivano was living a little way from it.
Q. When did you settle there?
A. I settled that place in about the year '58. I think we settled that.
Q. Were there houses there when you went there?
A. They were old houses.
Q. Who had been living in them?
A. The owners of the ranch. There were some of the owners, many of the owners that were there in the ranch.
Q. What did the owners call that place?
A. San Rafael, because it was within San Rafael.

Q. Was that called Old San Rafael?

A. That is further up.

Cross-examination by Mr. POPE:

Q. When were you born?

A. In the year '31.

Q. How old were you when you first went to this ranch?

A. You mean of San Rafael?

Q. Yes.

A. I might have been 7 or 8 years old.

Q. I believe you said that this place as called Old San Rafael was in ruins when you first went there, did you not?

A. Yes; I did not know any people living there.

322 Q. Were people living at the other San Rafael?

A. Do you mean the town called that?

Q. Yes, sir.

A. Yes, sir; there were some people at La Noria, and all about there was some little ranches.

Q. At this other place that you call San Rafael, that you say you settled, people were living there then, were they?

A. There were some houses there, and afterwards we built some more houses.

Q. How did these ruins at that upper San Rafael look at that time? Did they look old?

A. They were old houses already lying in mounds in ruins.

Q. Did you ever see any pottery around there?

A. Yes, sir; there were pieces of grindstones and also broken pottery.

Q. Where is this box canon that you spoke of with respect to what you called the Sierra de la Cobre?

A. There is no box there. That is the mountain that is called the Sierra de la Cobre.

Q. But you said that the Sierra de la Cobre was separated from the Huachuca Mountain by a box canon, did you not?

A. The Huachuca Mountain divides the mountains, and the portion on that side is called Huachuca and the other portion is called Cobre Mountains.

Q. Which side was called the Cobre Mountains—the side towards Santa Cruz or the other side?

A. That is very far from Santa Cruz.

Q. You spoke about a box canon; where is that box canon?

A. There is no canon there. There is a box canon near Fort Huachuca that divides the Huachuca Mountains and the Sierra de la Cobre.

Q. Does this box canon run through the Huachuca Mountains?

A. That runs to the north and comes out at the foot of Huachuca.

Q. Well, does it run through the mountains from east to west?

A. Yes, sir; that cuts the mountains from east to west.

323 Q. The mountain runs from north to south, does it not?

A. Yes, sir; from north to south.

Q. And this canon cuts the mountains?

A. It cuts the mountains at the north.

Q. And part of the mountain, then, is on one side of this canon and part on the other?

A. Yes, sir.

Q. Which part of the mountain is called the Sierra de la Cobre and which part the Huachuca, with respect to this canon?

A. The Sierra de la Cobre is to the west and the Huachuca is to the east.

Q. And the canon runs north and south?

A. Yes, sir; it runs from south to north.

Q. What direction is this canon from Mr. Igo's spring that you spoke about?

A. It is on the other side of the mountains; on the east.

Q. How far?

A. More or less, it may be one league. I do not know.

Q. Can you see it from San Rafael de la Zanja?

A. You mean at the place where the canon begins? Yes, sir; that place is seen there. There was an old road that we used to call Bado de Gato. It was a road over which we used to travel.

Q. If you stand at La Zanja and look towards this canon, in what direction are you looking?

A. It is northeast.

Q. In plain view?

A. It is in plain view from La Zanja.

Q. What direction is this canon from Igo spring?

A. To the east.

Q. By standing at Igo, can you see the spring then?

A. No. You have to turn around the edge of the mountain and go clear around the range. You have to turn around to see the box.

Q. How many sitios were there in this grant, according to the old people down there?

(Objection as calling for a legal conclusion. Taken subject to the objection. Exception taken.)

324 A. They said there were four sitios. I do not know myself.

Q. This penasco which you spoke of, you state that you can see it from the ranch, did you?

A. Yes; it can be seen from the ranch and from the valley.

Q. In plain view?

A. Yes, sir.

Q. You can see it from what ranch?

A. From San Rafael. It can be seen from there.

Q. Can you see it from down there at La Noria?

A. No; it is hidden by the hills, but from the middle of the valley it is in plain view.

Q. Can you see from the middle of the valley down at the international boundary line?

A. Yes, sir.

Q. Plainly visible there?

A. Yes, sir; it can be seen very well.

Q. And this point, which you can see plainly, as you state, from the middle of the valley at the international boundary line, is that what the people at Santa Cruz called the penasco?

A. Yes, sir; that was commonly called the penasco of Sonoite.

Q. And is that what you have always heard it called?

A. Always.

Q. You say you knew this country as early as 1840 or '39, did you not?
A. Yes, sir; I began to know it there from the San Rafael, and afterwards I knew all of it.
Q. Were you on this tract of land after the boundary line was surveyed or shortly after?
A. Yes, sir; in '77 to '82 I had some cattle in shares—300 cattle from Mr. Tanus.
Q. Were you there before that international line was surveyed?
A. Yes, sir; within the line I had these cattle.
Q. Do you know where Mowry Camp is?
A. Yes, sir.
Q. That was worked at a very early day, was it not, as a mine?
A. That was during the war between the North and the South
325 that was settled and being worked.
Q. How many people were there at that time?
A. There were few people on account of the Indians. There were many Indians, but still there were some people.
Q. There was a smelter there managed and carried on by the Americans?
A. Yes, sir; a man by the name of Mowry had that place.
Q. How many times have you been around these monuments which you have spoken of since Mr. Cameron has been there?
A. I have been various times there.
Q. Employed by Mr. Cameron to go around these monuments, have you?
A. Yes, sir.
Q. You began to show them to him and to show them to the surveyors that he has employed?
A. Yes, sir.
Q. Were you around with Mr. Roskruge?
A. Who is that gentleman?
Q. A surveyor.
A. Yes, sir. I do not know him now. I was with him.
Q. Did you see him on the witness stand this morning?
A. He is an old man. I know him well, perhaps.
Q. You went around with Mr. Benillas, too, did you not?
A. Also.
Q. You were employed by Mr. Cameron to go around with both of those men, were you?
A. Yes, sir; he asked me to come and show them to them.
Q. Did you go around with any other surveyors that Mr. Cameron sent out?
A. Another surveyor prior to that. I do not know what his name is. I also showed him the boundaries.
Q. How many times have you been here as a witness in these cases?
A. I came once as a witness, but was not sworn, and I came also the other day and was not sworn.
Q. You were here at the last term of court, were you not?
A. Yes, sir.
Q. You were here at the term of court before that to testify in
326 the Calabasas case for the claimants?

A. Yes, sir.
Q. You testified at the last term of court in the Boquillas grant?
(Objection as immaterial.)
A. I do not think that my testimony was taken.
Q. You testified in one case in the last term of court, did you not?
A. I do not remember.

Redirect examination by Mr. HENEY:

Q. Were you ever taken as a prisoner by the Apaches?
A. Yes, sir; when I was 14 years old.
Q. How long did they have you a prisoner?
A. I was 2 years and 3 months a captive.
Q. How did you get away from them?
A. I ran away from them to New Mexico.
Q. Were you around there where the San Rafael ranch is; did they bring you around through that country any?
A. No, sir; they would not bring me to that place.
Q. Where did they capture you?
A. In the neighborhood of Santa Cruz; north of Santa Cruz.
Q. Did you go back to Santa Cruz when you escaped from them?
A. Yes, sir; I went around by El Paso del Norte and turned about to Santa Cruz.
Q. Did the Apaches kill anybody on the occasion when they captured you?
A. They killed many people.
Q. Where?
A. At the town itself. They carried away many boys and women.
Q. At the town of Santa Cruz?
A. Yes, sir; at Santa Cruz they took them from the fields.
Q. How many Apaches were there in the attacking crew, about?
A. There were about 1,200 Indians. There was a general raid made; very large raid.
327 Q. How many people were living in Santa Cruz at that time?
A. There were more people there than now.
Q. About how many are there now?
A. I think that there are over one thousand people.

Recross-examination by Mr. POPE:

Q. Have you a ayuntamiento in Santa Cruz?
A. Yes, sir.
Q. How long have you had one there?
A. It has not been there for many years; it was recently established there.
Q. How long has it been there?
A. It is about 12 or 14 years that they established a president and a ayuntamiento.
Q. Before that there was only a judge at that place—judge of the *d*irst instance?
A. No, sir; the judge of the first instance is at Magdalena; there was only a judge there; he was a juez de pas; he was only a judge; he was not a judge of the first instance.

COLIN CAMERON recalled for the plaintiffs by Mr. Heney.

Q. What is the character of the country going from the south center monument of the San Rafael grant to the point taken as the southeast monument of the grant—southeast corner monument of the grant by Mr. Bonillas—when you leave this point here, south center monument?

A. You pass over mesas or arroyos, whatever you call them, and very much broken, gradually rising, until you leave at a point about south of what is marked here the northeast monument of the presidio; there we get into that cañon and open from down the valley on the Velanti Cañon, and that is a little valley that runs north up and beyond the corner taken by Mr. Bonillas as the southeast corner, where the jaralito is.

Q. When was the first time that you went to the monument taken by Mr. Bonillas as the southeast corner of the grant?

A. Sometime in the summer of '83, I suppose.

328 Q. Did you see any jaralitos in that neighborhood?

A. From a couple miles west of that southeast corner, the first time I saw that valley, there is a stream running down there, a little stream of water. The lands on the two sides itself, on the stream, were full of them; there is evidence of their stubs, branches where the cattle get at them; they were growing on the wash to a large extent; there is considerable along there yet.

Q. How near do they approach from that point 2 miles west of the monument—did they approach the monument?

A. They come up to within a stone's throw of it; two or three hundred yards from the monument.

Q. Did they in '83?

A. Yes, sir; they were higher then than they are now. A good many of these natural conditions existed prior to '93, because the grass was all eaten out of the country and off of the lands, and the water gathered in large ponds on these low places and carried and washed them away; but there is enough evidence remaining to see there was a water stream full of them.

Cross-examination by Mr. POPE:

Q. In '89 you presented a petition to the surveyor-general of Arizona for a resurvey of this tract?

A. I do not know whether I did or not; I do not know the year.

Q. In that proceeding Mr. Rochester Ford represented you?

A. I do not think so.

Q. I will get you to look at that letter and refresh your recollection as to whether Mr. Ford represented you.

A. Yes, that is what this paper says; that is a request that this lands be resurveyed by the Government.

Q. Mr. Ford was your authorized attorney in that case?

A. Yes, sir.

Q. And your attorney transferred to the Department of the Interior an affidavit of Mr. Roskruge, with map attached, setting forth the

329 boundaries of what you claimed, did you not?

A. I do not know that.

Q. I will get you to look at that and state what that is.

(Objection because it is not cross-examination. It is in rebuttal.)

A. I believe that is the map—yes, sir; that is the map.

Q. You submitted that in connection with that letter as a basis upon which you asked for the resurvey of this tract?

A. Yes, sir; that is, I do not know as I ever saw it.

Q. That is the map separate from this letter of Mr. Ford, dated December 18, 1889?

A. I suppose it is.

Q. Look at it and see.

A. I judge this is an exact copy of that; apparently so.

Q. Look at this letter of Mr. Ford.

A. I suppose that this is it; I know that I asked that the land be resurveyed included within the exterior boundaries.

(We tender in evidence in connection with the cross-examination of Mr. Cameron this letter of December 18, 1889, asking for this resurvey and this map referred to in the letter. Marked "Defendant's Exhibit No. 3."

Also affidavit and map attached thereto. Marked "Defendant's Exhibit No. 4.")

Adjourned until to-morrow.

MAY 19, 1899—10 a. m.

Mr. FORD. We offer in evidence copy of some deeds from A. A. Green to William C. Jones, trustee. Plaintiffs' Exhibit F 54.

Also copy of mortgage from William C. Jones, trustee, to A. A. Green. Plaintiffs' Exhibit F 55.

Also copy of deed from William C. Jones, trustee, to the San Rafael Company. Plaintiffs' Exhibit F 56.

330 Also certified copy of deed from Rochester Ford to Henry L. Christy. Plaintiffs' Exhibit F 56A.

Also certified copy of judgment and execution in the case of Hoover versus San Rafael Company. Plaintiffs' Exhibit F 57.

Also document which is in this case by stipulation, including the Spanish thereof. Plaintiffs' Exhibit F 58.

Also a certified copy of a document dated January 27, 1836, from the treasurer-general of the state of Sonora, including the original Spanish. Plaintiffs' Exhibit F 59.

HENRY BUEHMAN, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Heney, as follows:

Q. What is your business?

A. I am a photographer.

Q. How long have you been a photographer?

A. I have been a photographer for 34 years.

Q. Have you ever held any public office in Tucson?

A. Yes, sir.

Q. What?

A. I have served as public administrator; as assessor; that has been of the county offices besides city offices; I was mayor for two terms, 4 years.

Q. Did you take any photographs in the vicinity of the San Rafael?

A. Yes, sir; I did.

Q. When?

A. About 11 or 12 years ago, I think.

Q. I hand you plaintiffs' Exhibits F 28, F 39, F 45, F 38, F 41, F 31, F 33, F 34, F 30, F 29, F 32, F 40, F 41, F 26, F 27, F 44, F 37, F 36, F 35, F 43, F 42, and ask you to examine them and state whether you took these photographs or not.

A. These are all my photographs.

Q. Did you take them upon the ground?

A. I did.

Q. With the object they represent?

A. Yes, sir.

Q. Who was with you when you took these photographs, do you remember?

331 A. There was Mr. Colin Cameron, Mr. Brewster Cameron, this was his little son, and there was an old Mexican standing right there, Mr. Roskruge; then there were several other men.

Q. Was Mr. Colin Cameron there at all?

A. I think he was there at all these photographs; I could not say whether he was at every one.

Q. Have you any positive recollection on the subject?

A. No, sir; I could not say whether he was there at every one of them; he was at some.

Q. Do you remember where that was that you took that photograph, plaintiffs' Exhibit F 42?

A. That was called the east center monument; I recollect that very well.

Q. Can you describe what you found at the east center monument?

A. Yes, sir; it is on a mesa; it is a big mesa where this monument is.

Q. What direction from the San Rafael ranch house, do you remember?

A. I could not tell.

Q. Can you tell whether it is east or west of it?

A. It must have been east of it.

Q. You have no distinct recollection?

A. No, sir; but I recollect that photograph when I made it.

Q. What was the appearance of that monument in your photograph before you got there when you first saw it?

A. Just as it is here.

Q. What was its appearance as to age?

A. It was an old monument.

Q. What makes you think so?

A. You could see the grass growing right through the rocks.

Q. And plaintiffs' Exhibit F 43, do you recollect that place?

A. I recollect that big cottonwood.

Q. Do you know where Washington Camp is?

A. I do.

Q. How long since you have seen these photographs?

332 A. These two I have never seen since I delivered them.

Q. How long since you have seen a copy of these?

A. I have never seen a copy of them. I have the number of every one. In looking for different numbers I may see them, but I have not seen these photographs since I delivered them.

Q. Then you have not seen these photographs for 12 years?

A. No, sir; not since they were delivered.

Q. Do you remember what that was called; I hand you plaintiffs' Exhibit F 44?

A. No; I can not tell now just what it was; but I can tell you one thing about this photograph, there is a draw right in the center of this photograph. I recollect well when I made the photograph; I think I passed through this pass here between these two mountains with Mr. Brewster Cameron.

Q. Do you know where San Antonio Pass is down in that country? Were you ever down in that country?

A. Yes; prospecting a good deal in early days; not lately.

Q. I hand you plaintiffs' Exhibit F 27. Do you remember that?

A. Yes, sir; that is an immense big oak tree; I think it was on the northern end, if I am not mistaken now.

Q. What was the appearance of that tree when you first saw it?

A. It was a very, very old tree.

Q. What size, about, as to its diameter?

A. It must have been three feet across here, I think.

Q. What, if anything, was at its base?

A. A monument.

Q. What was that monument made of?

A. Rocks.

Q. How were they piled?

A. Well, as you see here, as represented in the photograph.

Q. What was the appearance of these rocks as to the time they
333 had been there?

A. O, they had been there a long time.

Q. What indicated that?

A. Age.

Q. What indicated their age?

A. You could see that it was an old monument.

Q. And you say you prospected in that country?

A. Yes; not right here.

Q. How many years did you prospect?

A. Off and on for the first ten years I was in the Territory. While I did not do any prospecting myself, I assisted those working mines.

Q. I hand you plaintiffs' Exhibit F 32. Can you recognize that place? I call your attention particularly to the large tree in the photograph and ask you if you can recognize it?

A. I can not place it.

Q. Compare it with the photograph, plaintiffs' Exhibit F 27, and see whether you can state whether or not it is the same tree.

A. I could not tell.

Q. Examine photograph, plaintiffs' Exhibit F 45. Can you remember where that is located; what it is?

A. No; I do not know where it is located now. I recall making the photograph, but I do not remember what it represents.

Q. Do you remember the monument in the vicinity of two small hills that are near San Antonio Pass?

A. Yes, sir; I recollect now; that was Mr. Brewster Cameron; I went there with him; that is the monument in the pass.

Q. What was the appearance of that monument when you first saw it?

A. An old monument.

Q. Do you remember Carricillo Spring or Igo's place?

A. Yes, sir.

Q. Do you remember photographing a monument beyond there in the direction of Fort Huachuca?

A. Yes, sir; I photographed it at the north end of the mountain. There was an old gentleman on horseback on that monument, I believe.

334 Q. I hand you plaintiffs' Exhibit F 37, and ask you if that is the one?

A. That is the one.

Q. Do you remember the appearance of that monument at that time you first saw it?

A. As I spoke about these being old monuments I recollect that I thought at the time they were old monuments.

Q. That one also?

A. Yes, sir; I thought they all were.

Q. I hand you plaintiffs' Exhibit F 38. Do you remember that?

A. Yes, sir.

Q. Do you remember also in the San Rafael Valley there was a cienega here in the background?

A. I think that is not very far from the house, if I am not mistaken; within a few miles. As I recollect now, there was old adobe buildings there when that was taken.

Q. Can you recollect whether this is the monument that you took there?

A. Yes, sir; I think the buildings were a little up the hill here; there is a slight slope of the ground here; I think the buildings were right here sloping.

Q. You can not tell from the photograph from recollection?

A. No, sir.

Q. I hand you plaintiffs' Exhibit F 28. Do you remember that?

A. Yes, sir.

Q. Can you remember where that was?

A. Yes, sir; that is down in the valley near the Hawshaw road.

Q. Which side of the Harshaw road, east or west?

A. On the right side going up from here; that would be west, I believe.

Q. I show you plaintiffs' Exhibit F 36. Do you remember that?

A. Yes; that is what they called Igo's place.

Q. Plaintiffs' Exhibit F 35. Do you remember that?

A. I can not place it exactly.

Q. I show you plaintiffs' Exhibit F 29. Do you remember that? Compare it with plaintiffs' Exhibit F 28 and see if you can tell

335 if it is the same place or not.

A. I think that was a little further up the can'on.

Q. Is that a reverse photograph of this—plaintiffs' Exhibit F 28?

A. I can not tell.

No cross-examination.

GEORGE J. ROSKRUGE, recalled by the plaintiffs by Mr. Heney:

Q. I hand you defendant's Exhibit Number 1. I believe you stated yesterday that the prominent red hill on that, you thought, was the same place called Saddle Mountain; can you now state positively whether or not it is?

A. Yes, sir; *the hill marked on this prominent red hill is the same* hill that was taken by Deputy Allis, and called Saddle Rock.

Q. Did you use that point as a point of observation in making your survey?

A. Yes, sir.

Q. Did you have the Allis survey with you?

A. That I could not tell; I do not remember, but I presume I had.

Q. Did Allis in making his survey take the same place you did for the El Caloso, Washington Hill?

A. Yes, sir; he has got a triangulation. It is the same spot that I got.

Q. Have you compared his map with your map and the field notes?

A. Yes, sir; they are identically the same hill—both Washington Hills. That is what is here shown.

(Objection to the answer, because the map is the best evidence. Proceed.)

Q. Is there any universal rule of construction by surveyors in making a survey on the ground from the title papers in regard to the meaning language which says that an arroyo runs towards a certain place?

(Objection to the question because it is purely a question of law and one the title papers will determine for themselves as to the language used in the title papers.

We will consider it hereafter.)

336 A. Yes, sir; there is.

Q. What is it?

A. It means the way the water flows. A road runs two ways; a fence runs two ways, but a river, or arroyo, runs but one way; that is the way the water flows.

Q. Is there any place on this San Rafael ranch, south of the point marked horse corral to the dotted square marked Well, any place south of that—did you find any arroyos that ran toward either the point marked Saddle Mountain or the point marked Penasco?

A. No, sir.

Q. In what direction do all these arroyos run?

A. They all run toward the south; I would like to read from the notes of Mr. Howe.

Q. Were those notes made at the time?

A. Yes, sir; made on the ground; 5 miles, 6 chains, 66 links; built monument base 2 x 6 *base*, 2 feet high, 12 feet wide; small wash; round mesa east and west, a few scattering oak trees on mesa east, no trees west; low rolling mesa west, covered with splendid grass; reached the line at 11 a. m.; Messrs. Richardson and Scott, on horses, went up the line in search of the Penasco; Roskruge and Howe examining the small arroyos for over a mile above and ¼ mile below the termination or end of measured line, and to the east of line for ¾ of a mile; no trace of tree with X cut on it, or monument of stone, nor any small arroyo draining

toward the Penasco; 1.30 p. m. Messrs. Richardson and Scott returned, not having discovered anything like monument beyond an arroyo draining towards the Penasco; Roskruge on east bank of the bottom land finds the monument; 1.50 p. m. R. R. Richardson mounted his horse and rode across to where Roskruge is seated; showers to west and southwest; 2 o'clock p. m. seated near monument on road—the above monument; at 2.15 R. R. Richardson and Roskruge returned, bearing to old tree and the monument. These notes were taken right on the ground.

Q. And are they correct?

A. Yes, sir.

337 Q. Is there any Penasco on top of Saddle Mountain?

A. No, sir; you could not make any Penasco out of it.

Q. I call your attention to a place marked old San Rafael pasture upon your map, marked plaintiffs' Exhibit F 52. Do you remember that pasture?

A. Yes, sir.

Q. Was there a fence around it?

A. Yes, sir.

Q. Is that correctly delineated upon this map with reference to its southern and its distance from the north line of the grant and the east line of the grant?

A. It is.

Q. In which direction does that arroyo which runs by the tree which you took for the north center monument run?

A. It runs in a northwestern direction for a couple hundred feet and then makes a turn and goes towards the southwest, or more correctly west.

Q. Towards what section of country does the water running in that arroyo drain?

A. That drains into the Sonoita.

Q. In which direction is that from the north center monument?

A. It is west.

Q. And beyond the Penasco and the Red Mountains?

A. Yes, sir.

Q. Do these lines on this map marked Red Rock Creek run towards the flow of the water and of the drainage of the water from that section of country represented on your map?

A. Yes, sir; the arrow at the end represents the course in which it flows where it says T. 22 south, range 16 east.

Q. At the northwest corner of the grant?

A. Yes, sir.

Cross-examination by Mr. BARNES:

Q. When did you make these notes which you have read over?

A. They were made in '80, when I made the survey; October, '80; these are a copy of the original notes.

338 Q. Where was Mount Washington?

A. It is at Washington Camp.

Q. You say you had a bearing south 81 degrees with Mount Washington. What mount was that?

A. That is the hill that we have been referring to as the Penasco, or Saddle Rock Hill, on this map.

Q. From your notes I read the following bearings. North 57 degrees 4' west to Red Mountain Penasco. Is that the same Saddle Mountain?

A. That is the same mountain.

Q. I read as follows: Richardson and Scott, 11 a. m. on horses went to arroyo draining towards the Penasco. Is that the same as this Saddle Mountain on your map?

A. That is the same one; yes, sir.

Q. I read again: No trace of a tree with X cut on it or a monument of stone draining towards the Penasco. When did you find that tree as you got it there (on his map)?

A. At the survey I made in the spring of '80.

Q. How long after these notes were made?

A. That was made in October, '80.

Q. And this map (plaintiffs' Exhibit F 52) was made before those notes?

A. Yes, sir.

Q. Now, is Mount Washington the same thing as the El Caloso?

A. Yes, sir.

Q. I read again: R. R. Richardson went to top of the Penasco. Is that the same as Saddle Mountain you got here?

A. Yes, sir; the same Saddle Mountain.

Q. Again I read: The Penasco bears south 67 degrees west. Is that the same Saddle Mountain?

A. The same Saddle Mountain; yes, sir.

Q. I read again: Red Mountain distant from the Penasco about two miles. Is that the same Saddle Mountain?

A. Yes, sir; the same Saddle Mountain.

Q. I read again: An arroyo that runs towards the Penasco. Is that the same Saddle Mountain?

A. Yes, sir; the same; marked on that map.

339 Q. These are all broken hills in here, and they run north, sout', east, and west, and the general course of these elevations is to the south?

A. Yes, sir.

Q. Did you find a del valle that drains towards the Penasco?

A. Yes, sir.

Q. Was it at a point marked Saddle Mountain on the map?

A. Yes, sir; two or three miles, probably four or five miles, east of it. I am testifying from recollection; it is impossible to say. I believe it is about here somewhere, near the point marked spring, near the letter o in Canelo.

Q. Put in a letter to designate it.

A. G is the place of the pile of stones on the south side of the ravine or valley that drains on the south side of the Penasco; the oak tree is near that point.

Q. I will ask you to be kind enough to allow me to introduce these notes in evidence. (Marked defendant's Exhibit No. 5.)

Q. Where is the divide on that map; what portion of that is the divide; what separates the waters that run towards the Sonoite and those that run towards the Santa Cruz; what portion of the map is that divide?

A. The divide is along this mesa running from the horse corral and the spring—from Saddle Mountain to the horse corral and the spring—and the waters at that point run both ways. That is the location of it.

Q. And the Saddle Mountain is right on the edge of that divide?

A. Yes, sir; Saddle Mountain is right on the divide. I think the mesa starts probably right here, and from here are broken hills to the left. The mesa starts from the east edge of the Saddle Mountain and runs towards the east of the Canelo as marked on this map. Around Saddle Mountain it is broken with gullies and washes—gullies between the hills.

340 Q. Was Mr. Colin Cameron with you on the survey of 1887?

A. I do not remember that Mr. Colin Cameron was with me on any of these surveys.

Redirect examination by Mr. HENEY:

Q. Explain why you did not go to the blazed tree when you made the survey for Mr. Richardson—in this survey you made for Mr. Wasson.

A. The information was too vague about that tree and the marks. There was nothing on it to indicate that it was the tree; I did not think that it was the tree.

Q. Did you find the arroyo which runs towards the Penasco?

A. Yes, sir; it runs towards the south from it.

Q. Do you remember whether you could discover the red mountain in the distance?

A. Yes, sir; it stands on the edge of the mesa, ten to fifteen miles way down below.

Recross-examination by Mr. BARNES:

Q. At the time you made your survey you believed there was a blazed tree there?

A. It had been blazed a long time before; the blaze had grown over the cuts.

Q. From experience, how long, about, had that tree been blazed?

A. Say, twenty years ago. I got a piece cut right out of the solid oak tree two or three inches thick; I would like to show that piece of wood to the court.

YGNACIO BONILLAS recalled by Mr. HENEY:

Q. I hand you the original expediente of the San Rafael de la Zanja grant, plaintiffs' Exhibit F 2, and would like you to translate from the original, and give us the strict literal translation of what the expediente says in reference to the red mountain from the north center monument of the grant.

A. Being at the north center monument, the judge surveyor says
341 that two hundred cordels more were estimated towards the west, which end at the foot of a red mountain, which can be discovered in an opening which is between the Penasco and the Sonoite mountains, which must serve as a monument.

Q. From that north center monument, in the vicinity of that north center monument, can that red mountain be seen?

A. Yes, sir.

Q. Over what area of ground can that red mountain be observed in the vicinity of the north center monument; in that part of the country can that red mountain be observed?

A. I think that it can be observed within a distance, perhaps, of a hundred yards towards the north of the north center monument.

Question. And if you go a hundred yards further north than that can you still observe it?

A. I do not think so.

Q. If you go a hundred yards south from that point you can?

A. No, sir; you cannot observe it from the north of the nort' center monument, much less from any point south.

Q. Can you if you go a hundred yards east?

A. I think you can, because there is a small elevation of land there; I think you can see it from there.

Q. Within how wide a space?

A. Within a hundred yards, I should think, from the north center monument.

Q. Could that language be construed as meaning, stands in an open place?

(Objection because that is a question for the court.)

Q. In making a translation of it I mean, and as to what construction can be placed upon it, can it be translated properly into stands in an open place; what word is used which you have translated discovered?

A. Descubre; that which is discovered or which can be dis-
342 covered. Being at that point—at the north center monument—and looking at this mountain, you immediately understand what the surveyor meant when he used this language, the red mountain can be discovered, or can be seen in an open form by mountains, high mountains, on the right and left of the line of sight, and it is just through that small opening that you can see the mountain in the distance, and you readily understand what is meant by using that language, discovered that mountain through that opening.

Q. About how wide is that place, and how long is that distance that it seems to cut you off from the right and the left?

A. It may be four or five miles.

Q. And about how wide a space does it seem to cut you off from?

A. It is a narrow space; A. I should not think it would be over a hundred yards wide.

Q. And can you see anything at the end of that funnel except that red mountain?

A. Nothing except the red mountain and the edge of some hills that come in the line of vision from the right and the left.

Q. Can you see the Saddle Mountain from there?

A. No, sir; I do not think you can see it.

Q. Can you see the Penasco, which was taken by you as the Penasco?

A. Not from the very north center monument, but by moving a little towards the north a few yards.

Q. Is there any universal rule among surveyors as to the construction to be placed upon language which says that an arroyo or dry river bed, or river or creek, or anything of that character, runs towards a certain point?

A. I do not think that that rule is confined to surveyors; I think it

is general among all people that have common sense; and water
342 runs down hill, and you speak of water running in a certain direction, why, it means the direction in which the water runs, flows.

Q. Is that the uniform rule among surveyors?

A. I think so, as far as my knowledge exists.

Q. You have made a great many surveys besides the hundred you mentioned, and resurveys, have you?

A. Yes, sir.

Q. Have you ever met any instance in your surveys where the language used that an arroy', or creek, or river bed, or anything of that sort, where it meant other than what you have stated?

A. I have met with the language very often referring to water courses.

Q. What I mean to say, a direction, an opposite direction to that in which the water runs, take a course up the river, the other direction from which the water flows?

A. I have not.

Q. In which direction does the water flow in the arroyo which runs by the place which you have taken as the north center monument?

A. It runs toward the west.

Q. Is that towards the Penasco, the point you have taken as the Penasco?

A. That is towards the Penasco. The Penasco is perhaps a little south of west, but that water course seems to run directly towards the Penasco.

Q. Would it run directly towards the Saddle Mountain?

A. No, sir; Saddle Mountain is considerable further to the south of the Penasco.

Q. Do you know what drains the water from that part of the country?

A. I think it drains in what is known as the Red Rock country and runs off into what they call—runs off into the Sonoite Creek.

Q. Have you made a list of grants which have been surveyed by you, resurveyed, in Sonora for demasias?

A. Yes, sir.

Q. Is this the list which I hold in my hand?

A. Yes, sir.

Q. Does that contain a correct statement of the total area you
344 found within the lands or monuments called for in the title papers, and the quantity which the title papers called for, and of the area of the demasias?

A. Yes, sir; in each instance.

Q. And in each instance does it contain the demasias?

A. Yes, sir; there was one instance where there are no title papers, I think the very last; it is the town lands of Cuquiarachi. The lands were shown to me by a committee of the town, and the total area I found within these damasias was 17,706.2 acres. The cabide legal of a town—of a little town—is one sitio, one square leag'e, 4,338.4 acres, leaving the demasias 13,367.8 acres, and the total, as far as I know, was issued when I made the survey.

Q. Did title issue to the demasias to all the other surveys—grants that you have mentioned?

A. Not to some of them. Some of them the demasias absorbed by concessions, but was granted by the Government afterwards, and just the cabide legal was marked out of these grants.

Q. Did you survey the La Casita grant for demasias?
A. Yes, sir; in order to ascertain whether the former survey was correct or not.
Q. What was the total area you found within the boundaries of that grant?
A. The total was 110,238.7 acres.
Q. What was the quantity called for in the title?
A. 36,876.4 acres.
Q. What was the demasias?
A. 73,362.3 acres.
Q. Was any title issued for the demasias?
A. Yes, sir.
Q. Did you survey the Los Nogales grant?
A. Yes, sir; this Nogales is a grant for the full legal quantity.
Q. And the Sonoite?
A. Yes, sir.
Q. What was the amount within the boundaries?
A. 26,735.
Q. What was the amount called for in the title papers?
A. 8,919.6.
Q. What was the demasias?
A. 17,815.4.
345 Q. Was the total for the demasias issued in that grant?
A. I think it was.
Q. Did you survey the Juliavana grant?
A. Yes, sir.
Q. What was the total amount in the boundaries?
A. 14,768.3.
Q. What was the demasias?
A. 6,175.
Q. Were titles issued for the demasias?
A. Yes, sir; I know in a great many instances where demasias have been issued, titles to them.

(The same objection to all this testimony is offered as was offered before.

We offer this list in evidence showing total areas, cabide legal, and demasias. Plaintiffs' Exhibit F 60.

We also offer in evidence a document dated November 25, 1865, and recorded in the recorder's office of Pima County, Arizona, on pages 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 78, 80, and 81 of the book of records of land titles from the Mexican Government. Plaintiffs' Exhibit F 61.)

Cross-examination by Mr. POPE:

Q. You gave in each case the cabide legal and the demasias; that is, the quantity of land purchased and paid for as shown by the title papers, is it?

(Objection because it asks for a legal conclusion.)

A. Yes, sir.
Q. And the demasias is what?
A. The excess of area found within the monuments established after deducting the cabide legal from the total area.

Q. These proceedings were under the law of 1863 and the laws amendatory thereto in Mexico, were they not, the proceedings shown by your list as here presented in evidence?

A. Yes; I think they were under that law, the law of '63, and the laws amendatory thereof.

346 Q. Now, in how many of these instances were the demasias or a part thereof absorbed as you stated by concessions made by the National Government?

A. In the case of Juliavana, Las Animas, Cerro Tordillo, Cuheuta; in these instances, to my knowledge.

Q. By concessions, you mean; what do you mean?

A. I mean that contracts being made with the General Government of Mexico to survey public lands in some instances and in others both public lands and demasias in certain districts or in certain States.

Q. Were these concessions to the grant owners?

A. These concessions were to the parties making the contracts with the Government.

Q. In no instance to the grant owners, were they?

A. I do not remember; but in these concessions I think that in a number of them the grant owners had the privilege of buying their own demasias if they wanted them from the Government.

Q. However, in these instances you have named the concessions had absorbed portions of the demasias of the owners, or the denouncers of the demasias secured portions of the demasias?

A. In most of the cases I have named the owners refused to buy their demasias, or did not want them; they considered that they did not want them; the total of which was left of the demasias after deducting the concessions.

Q. The owners had the title to the cabide legal, portions of the demasias under this law of '63 that had not been absorbed by these concessions?

A. Yes; by paying for them as provided by the law of '63.

Redirect examination by Mr. HENEY:

Q. The Government sold to parties whom you call concessioners a certain interest, or rather the Government let contracts for certain persons called concessioners to survey the lands in different districts in Sonora or make a map or plat where the public lands were?

347 A. The contracts, as far as I know, and I know several of them, were under these conditions: That the concessioners were to make at their own expense surveys of the public lands and the demasias in certain States or districts of States, and in lieu of such expenditures of money they were to receive one-third of the lands. As a matter of fact, at that time the Government had no maps or plats or anything of that kind from which to get the demasias without these surveys, which was the purpose of having these surveys made. The object was to ascertain where the public lands of the Government were and make a record of it, so as to get the fee in the office so that they could sell these lands.

Q. Were such maps made, and are they now in the office?

A. Yes, sir.

Q. And the contractor or concessioner—was he to receive his pay for these surveys in land?

A. Yes, sir; one-third of the lands found.

Q. Do you know of any instance in which the owners of the grant were not allowed to retain the excess within his boundaries in any survey you ever made?

A. Yes, sir; I know of some instances in which the owners were not allowed to retain the excess just because there were certain circumstances that he had not made use of.

Q. You spoke of some of the lands having been absorbed?

A. Yes, sir; I had in mind the case of the Cuchuta grant. In the Cuchuta grant the owners of the grant denounced the demasias and had them surveyed, but questions arose among themselves and they were in litigation when these concessioners came along there surveying. They paid no attention to the monuments outside of the boundaries of the grant, but simply to the cabide legal.

Q. Do you know of any instance where the owners did not disagree among themselves, or where the lands had previously been sold to some one else without prejudice on their part, and the owners were no'
348 allowed to retain all the lands?

A. No, sir; I do not know of a single instance.

Q. Do you know whether or not, prior to '53, in any case in which resurveys were made in which the owner was allowed by law to select the cabide legal, if he did not desire to take the demasias?

(Objection because it is not shown to be within the personal knowledge of this witness.)

Q. Have you made any recent examination of the archives in Sonora?

A. Yes, sir.

Q. Did you find any law upon that subject in those archives?

A. Yes, sir.

Q. When did you find that?

A. Very recently; that was towards the end of last month.

Q. Did you make a note of it?

A. I did; but I have not my note book here.

Q. Will you bring it this afternoon?

A. I will.

Recross-examination by Mr. POPE:

Q. Is it not true that there was a denouncement made of the portion of this grant lying south of the international boundary line?

A. Yes, sir.

Q. By whom was that denouncement made?

A. It was made by Don C. Elias.

Q. When?

A. I can not recollect, but my impression is some time in '86 or '87.

Q. Was that tract denounced as the lands of Encinitos?

A. Yes, sir; it was so called.

Q. You are the owner of that tract at the present time, are you not?

A. Yes, sir.

Redirect examination by Mr. HENEY:

Q. Was there an application made by Mr. Alfred A. Green to the judge of the first instance of Magdalena to have his grant decreed
349 to him according to the title papers?

(Objection to that.)

The COURT. Go on.

A. Yes, sir.

Q. Do you know what the result of that trial was?

A. I think that the result was that the judge of the first instance gave a direction to the district judge at Guaymas to issue a decree or decision that he was entitled to all the lands to the outside boundaries.

Q. What year was that?

A. I do not recollect. I think it was in the year '80.

Recross-examination by Mr. POPE:

Q. He never got title from the Mexican Government, did he—Mr. Green?

A. I do not know.

Q. You hold the title now. Did you deraign through Mr. Green?

A. No, sir.

Q. Other parties got title subsequently?

A. Yes, sir.

Q. Did you deraign from the Government?

A. Yes, sir. I would like to explain, if you will allow me. I think there was an application made for a survey of the Encinitos. The publications were made summoning the owners *to* those that might have any claim to these lands to appear and show why no such survey should be made. Nobody appeared; nobody claimed the lands; consequently the Government, believing that it was its own land, issued title to it.

Redirect examination by Mr. HENEY:

Q. You can buy any private lands in the State of Sonora and the Government will issue title to you?

A. Yes, sir.

Recross-examination by Mr. POPE:

Q. Do you have to petition for the land that you own?

350 A. All the proceedings are gone through. If you do not appear to *who* why title to the land should not be sold, why, it is sold and title issued without demand of a third party.

Q. These surveys and concessions that you made covered what?

They covered the cabide legal. I know in a good many instances where such surveys were made by these concessioners that covered the cabide legal and private lands where the contracts called for the cabide legal or where the contracts were to survey public lands, and that included what we call baldios and demasias.

Redirect examination by Mr. HENEY:

Q. The contract was to survey the lands and plat them for use?

A. Yes, sir.

Q. Private lands and public lands, and show which was private and which was public lands?

A. Yes, sir.

COLIN CAMERON recalled by Mr. HENEY:

Q. On this map of Mr. Roskruge, marked plaintiffs' Exhibit F 52, you notice the point which is marked cienega pasture in the northeast portion of that map?

A. Yes, sir.

Q. Is that land enclosed in any way?

A. It has a wire fence around it.

Q. About what quantity of land is there in it, as shown by that survey?

A. I think it was about 600 acres.

Q. Is that the same land that was involved in a suit of Colin Cameron versus the United States, being number 1158, in the Supreme Court of the United States, October term, 1889?

A. That is the particular tract of land.

Q. I wish you would show on that map the direction of the flow of the water in that portion of the grant north of the words San Rafael de la Zanja.

A. It runs down right that way. It runs from the divide.

351 The divide reaches here to what is called the San Rafael Valley, and the Red Rock country is shown by that line that runs out of the Saddle Mountain and passes by north of the horse corral.

Q. In which direction does the water flow from there?

A. The water from this Saddle Mountain flows northwest; this road that runs from Harshaw to Fort Huachuca runs right by the Cienega pasture, and then again this road gets down and flows southeasterly, towards the southeasterly and then again south.

Q. How does the water flow from north of that line, irregular line from Saddle Mountain south of a point a short distance from horse corral?

A. It goes directly north for a short distance, and then runs down the main Red Rock Canon in a western direction.

Q. How does the water flow from above the Red Rock Creek as marked on that map in the vicinity of the north center monument?

A. From the north center monument there is a divide; the water on the north of the divide runs towards the Babocomari, and on the south of it it runs practically west. Along these Canelo hills towards the west the water runs in a southeastern and northwestern direction in the canons that come around the mountains towards the southwest and then turn in the main Red Rock Creek, which is almost directly west.

Q. From a point north of the San Rafael ruins is there any; do any of these canons run towards Saddle Mountain or towards the Penasco?

A. No, sir; these all run immediately south. There is a high ridge right there at this point north, between the horse corral and sheep ranch, in lead pencil, the letter R, and from south of that that ridge runs directly toward the south.

Q. Where would that elevation be with reference to that ridge; would the 200 cords north of the San Rafael ruins be?

352 A. It is a little bit above the sheep ranch; just 200 cordels north of the La Zanja point it is.

Q. Where would that be?

A. Just a little above the sheep corral.

Q. And how far above the sheep ranch was it?

A. It is about half of a mile; the ridge divide runs between the sheep ranch and the horse corral. It is, I should say, perhaps a mile across there. That ridge runs out to a point to where this windmill is and stops, and then this depression comes down.

Q. Do any of the arroyos on the south side of the ridge run towards the Saddle Mountain?

A. None.

Q. In which direction do these arroyos run?

A. The arroyos between the Old San Rafael and the horse corral, they all run south; there is a divide between the sheep ranch and the horse corral, and this water comes down this way.

Q. All the water south of the divide between San Rafael and the Red Rock country all runs south?

A. Directly south and southwest of the horse corral; that immediately west flows southwest; it comes in about 2 miles or 3 miles of this point here to the upper windmill.

Q. In which direction does the arroy' run that runs by the north center monument?

A. It runs west, a little bit south of west, more west than south a good deal.

Q. Does it run towards the Saddle Mountain?

A. No, sir; it runs more north than that.

Q. Can you see the Penasco from the north center monument or in that vicinity?

A. Not exactly from the south.

Q. Can you see the Saddle Mountain from anywhere in that vicinity?

A. No, sir; this Saddle Mountain on that side presents a different appearance; you can not see it.

353 Q. What is the character of the country in going from the north center monument to the red monument to the northwest corner as taken by Mr. Bonillas?

A. Very rough.

Q. Is it possible to drive through there with a wagon?

A. You can not do it.

Q. How about riding horseback?

A. There is a trail that comes down to that canoj, horse trail, that goes to the canon or arroyo from the north center monument.

Q. And what is the condition of the country going from there as to its safety in Indian times?

A. Nobody would go over it; it would be very dangerous indeed.

Q. From the northeast monument to the north center monument what is the character of the country?

A. The country is rough between these points.

Q. Can you drive from the northeast corner monument to the north center monument in a direct line?

A. By going away around; no, sir.

Q. Can you go there in a wagon from the northeast corner to the north center monument?

A. Yes, sir.

Q. Did you ever drive with a wagon from the northeast monument to the north center monument?

A. Yes, sir; many times.

Q. How did you drive there?

A. We started at the northeast monument, following the road that goes by Carricillo Spring, where Mr. Igo now lives, on this map, that goes by

the place there marked Martinez, and coming on that road on which we go over to the point where there is another road leading north marked Canelo Creek, then you go directly north on the road as shown here along the Canelo Creek north and about half or three-quarters of a mile of the north boundary of the San Rafael grant, then you go in a western direction and keep on going north until you get perhaps—until you get
354 about the point three-quarters of a mile north of it, then you go immediately to this north center monument; there is a rather plain valley leading up to it from the north.

Cross-examination by Mr. POPE:

Q. What do these lines represent here?

A. The head waters and that Canelo Creek, these hills here.

Q. Where does that creek head with respect to the Canelo Pass you got here?

A. The main Canelo Creek heads out in this direction some place.

Q. What is this drainage here?

A. That is the canon running down to this place.

Q. From the Canelo Pass is there a canon running down into the Canelo Creek?

A. Yes, sir.

Q. Where is the Cottonwood ranch?

A. Right there in the northwest corner.

Q. That is outside of this survey as made by Mr. Bonillas?

A. Yes, sir.

Q. How far outside?

A. As shown on that map it is a mile or two outside; in looking from this point it looks just barely outside on the ground.

FREDERICK RONSTADT, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Heney, as follows:

Q. Did you know Colonel Ronstadt here in '65?

A. No, sir; I was not born then.

Q. How old are you?

A. 31.

Q. Do you know who Colonel Ronstadt was?

A. My father.

Q. Do you know whether he held any public office about '65?

A. Yes, sir.

Q. Where was he living then?

A. I could not say positively.

Q. What office did he hold?

A. He was in '64—I think he was treasurer of the State.

Q. Do you know anything about his filing a paper here, in the
355 recorder's office here, in '65.

A. I do not.

No cross-examination.

GEORGE J. ROSKRUGE, recalled by the plaintiffs by Mr. Heny:

Q. Did you ever have any occasion to cut down any tress in this country, oak trees, in order to discover whether they bore any marks upon them that had been said to be placed there by surveyors?

A. Yes, sir.

Q. What was the occasion when you did that?

A. I did it on several occasions.

Q. Did you do it on one occasion when you secured the piece of wood you cut out?

A. Yes, sir; this is what was cut out of the tree in order to find what marks had been cut in it by the surveyor, and the marks are here in relief.

Q. Who was the surveyor who run these lines?

F. White, in October, 8&4; this survey was made October 29, '74.

Q. What were the calls that were said to be on it?

A. It marks corner sections 5, 63, and 32, ranges 18 and 19 west, 16 east.

Q. Did you find any marks on this piece of wood?

A. Yes, sir; 3 S. R. 16, 31.

Q. Where are these marks on the piece of wood?

A. Right on the inside.

Q. This was cut from the tree at the place you found it?

A. Yes, sir.

(We offer this piece of wood in evidence. Plaintiffs' Exhibit F61.)

Q. How much solid wood did you find on the outside of these marks?

A. When the tree was cut it was 15 inches in diameter.

Q. Did the field notes state whether the bark had been cut from the tree before the marks were cut in?

A. The tree is also blazed.

Q. How did these marks show, on both sides?

A. They were cut in on the reverse, blazed.

356 Q. How much solid wood went to the outside of these letters?

A. Three inches of wood.

Q. Does that include the bark?

A. No, sir.

Q. How much bark?

A. Probably an inch of bark.

Q. How much would that be in all?

A. Four inches bark and wood.

Q. Is that oak tree you cut down in Pima County, Arizona?

A. Yes, sir. We had it cut to find the marks; they cut until they found the letters.

Q. Was there any blaze on the oak tree which you found at the distance of two hundred cordels north of the old San Rafael when you made that survey for Mr. Wasson?

A. Yes, sir; for the last twenty years I have searched for blazes on trees; at one time people believed the world was flat; well, now they don't; I believed one time that it would be impossible for a tree to grow over; now I do not.

Q. Did you find any cross on that tree at the north center monument the first time you saw it?

A. No.

(Objection made to all this evidence as being improper and immaterial.)

Q. Does that piece of wood show any signs of the marks on the bark?

A. No, sir; in going through the bark until you get to the inside

where you now see; it shown no mark, or cut, or scar, or anything; not an iota until you get probably within an inch of the interior piece of the wood.

Cross-examination by Mr. POPE:

Q. How big was that tree before you commenced to hack at it?
A. I could not tell; it was 15 inches in diameter in '74, 20 years ago.
Q. How did you get that?
A. I got that from the field notes.
Q. How big was it when you saw it?
A. It was probably 20 inches in diameter.
357 Q. This tree is a black oak tree?
A. Yes, sir.
Q. This other oak that you spoke of, was that a black oak?
A. The same thing as this.

WILLIAM M. TIPTON, recalled for the plaintiffs by Mr. Heney:

Q. You made an examination as an expert for the Government of the archives at Hermosillo, Sonora?
A. I made an examination of a number of expedientes in those archives; I did not examine all the expedientes.
Q. Did you make an examination of the books of Toma de Razon which may be found in the archives, or look for them?
A. I can say that I looked for them in one sense, because I was permitted to have unlimited search. I inquired of the custodian for such papers as were contained in the archives and looked for the Toma de Razon in regard to land titles.
Q. Can you describe those two books as to the outside appearance and anything that may have been on the outside, in a general way?
A. There was one book which contained entries, according to the best of my recollection, for the years 1824 and 1825; that book was very small compared to the other book which was shown me. I do not recollect now its dimensions, although I measured it. I should think it was not to exceed 6 or 7 inches in length, perhaps even less, and less than that in width. It consisted of 12 leaves at the time I first saw it, 5 of which contained writing and 5 of which were blank. On the first page of the first leaf it had the number 1 on it, and some title designating its contents or the purpose for which it was intended; that I do not recollect. The second book was very much larger than the first; I think it contained nearly 90 leaves, and the first entry in it, I think, was some time in 1831, and the last was some time in the year 1849; I simply state this from recollection; I have a note in regard to it.
358 Q. Was there any endorsement as to the number of the book?
A. This large one?
Q. Yes, sir.
A. No, sir; not to the best of my recollection; I think not; I am quite certain there was not.
Q. What kind of cover did it have on it?
A. I do not recollect whether it was covered or not—that is, whether it had any other than the outside leaf before coming to the cover.
Q. Before coming to the contents of the Toma de Razon, do you remember if it did not have a statement of the titles contained therein commencing in 1831?

A. That I do not recollect; I have notes about what was on the first leaf; if there was anything more than paper I do not recollect, but I copied what was on the first leaf.

Q. You do not recollect what?

A. No, sir; the Toma de Razon book was for a certain purpose, but I do not remember the text of the statement.

Q. There was no book at all that contained an endorsement which claimed to be book number two?

A. No, sir; there was no such book.

Cross-examination by Mr. POPE:

Q. What was the date of the last entry in book number one?

A. To the best of my recollection it was May 13, 1825.

Q. And what was the first entry in the other book?

A. Some time in 1831; I could not state from recollection the month or day.

Q. Have you a note which shows the month and day?

A. I think I have in my note book probably.

Q. Is it accessible?

A. Yes, sir; right in the office.

Q. I wish you would step in and get them.

A. (Witness leaves the room and returns with notes.) The first entry in the larger book of Toma de Razon, according to a note which I made at the time I examined that book, was October 24, 1831.

359 Q. You say there were a number of blank leaves following the entry of May 13, 1825, in the first book to which you referred—the small book?

A. Yes, sir.

Q. Did you make an examination of the contents of these two books?

A. Yes, sir; I made an examination of both.

Q. Was there in either of the two books of Toma de Razon the titulo of the San Rafael de la Zanja grant?

A. No, sir.

Redirect examination by Mr. HENEY:

Q. Did you find in the archives the original matrix of the San Rafael de la Zanja grant?

A. You mean the expediente?

Q. Yes, sir.

A. I think we found that there. I remember, as a matter of fact, we found the expediente there.

YGNACIO BON ILLAS, recalled for the plaintiffs by Mr. Heney:

Q. Did you bring with with you the memoranda or reference to the law in regard to demasias which you found in the expediente in the archives of Sonora recently?

A. Yes, sir; in it is in reference to the law of cabide legal. I found it on page 36 of the expediente of the resurvey of the Chupisonora grant wherein the State surveyor says: Article 4th of law number 197, of the 14th of May of the present year (1852), leaves the selection of the land to their titles to the possessors. When he was going to locate the cabide legal of the grant he states this and summons the owners so that they will make the selection.

Q. The expediente showed that, did it?

A. Yes, sir; the expediente of the resurvey of the grant of Chupisonora grant.

(Objection made to this testimony as being secondary, and on the further ground that the contents of that expediente are immaterial as bearing on this case.)

360 Q. You were asked about the sale of a part of the San Rafael de la Zanja grant in Mexico. Did that purport to be a sale of the demasias or of the cabide legal, or what did it purport to be a sale of, or of public lands?

A. I do not remember very well; it is about 12 years since I made that survey, and I do not remember exactly the reading of the application for that land, but my impression is that it was petitioned for as public land.

Cross-examination by Mr. POPE:

Q. When was the titulo issued for that?

A. I do not know.

Q. About how long ago?

A. I could not remember anything about it when the titulo was issued.

Q. You state you own the land now?

A. Yes, sir.

Q. The titulo has been issued?

A. Yes, sir; I understand it has been issued.

Q. What is the date of the law cabide legal referred to in this Chupisonora grant?

A. It is called law number 197 of the 14th of May of the present year; that was in 1852.

Q. Did you find that law?

A. I did not look for it.

Q. Have you ever seen a copy of that law?

A. Not to my recollection.

Q. Was it a State or Federal law, or do you know?

A. I do not know.

Mr. FORD. We ask leave to file this supplemental answer.

Granted.

We also offer in evidence the complaint on page 1 of the transcript in the case entitled "In the Supreme Court of the United States. October term, 1889. No. 1180. Colin Cameron versus the United States;" also answer on pages 2 and 3 of said transcript, and the finding of fact in said case on pages 9, 28, and 29 of said transcript. Plaintiffs'

361 Exhibit F 62.

Also offer in evidence the decision and mandate of the Supreme Court of the United States in said case, a transcript of which is on file, Plaintiffs' Exhibit F 63.

(Objection that the same are immaterial, irrelevant, and incompetent and not binding on the Government in these proceedings.)

R. R. RICHARDSON, sworn on the part of the Government, testified, upon direct examination by Mr. Barnes, as follows:

Q. How long have you lived in southern Arizona?

A. Since 1880, April.

Q. And in what business have you been engaged during that time?
A. In the cattle business, stock business, and mining.
Q. Among other things, have you held any office?
A. Yes, sir; I have been supervisor of Pima County two terms.
Q. When you first came to Arizona, in what business did you embark?
A. In mining business first.
Q. And where?
A. In Harshaw and Tombstone County.
Q. And what mines were you interested in in Harshaw County?
A. In the Harshaw mines.
Q. Where is that location from Harshaw?
A. About one mile.
Q. Have you owned that mine ever since?
A. Yes, sir.
Q. At the time you came in there, how much of a settlement was there in that neighborhood?
A. It was quite a large camp at Harshaw; I presume there was five hundred or a thousand people there.
Q. And in what were they engaged?
A. Mining.
Q. And where were they mining?
A. Most of the mining was being done on the Hermosa mine.
Q. Where was that located?
A. That is about a mile from Harshaw.
362 Q. And what kind of mining was carried on?
A. Silver mining.
Q. Were there other mining locations in that neighborhood?
A. Yes, sir.
Q. In general, what was their extent?
A. There was a great many; 15 or 20.
Q. At work?
A. No, sir; I presume there are five or six working.
Q. And how about the other locations?
A. There was a great many.
Q. What is the character of the country going from Harshaw to the right and left?
A. Quite rough country.
Q. And what as to its mineral-bearing character?
A. There is mineral in almost every direction from Harshaw.
Q. Now, going south from Harshaw, did you ever know of any other well-known mines towards Mowry?
A. Mowry is an old mine; never has been worked since I have been in the country until lately; not to amount to anything until lately.
Q. What evidence of its age or its having been work' is there?
A. It shows that it has been worked to a great extent a great many years ago; there is a shaft on it about 250 feet deep and a good many cuts and small dams—slag from old smelter in the neighborhood. There was a very large slag dam, and a very large stack built of brick and quite a number of adobe furnaces that they call stock furnaces.
Q. How tall was this brick smokestack?
A. I would think 40 feet.

Q. The time you came, was there men working on this mine?
A. No, sir.
Q. What was the appearance as to age at that time?
A. It appeared very old property.
Q. Going south from that range of mountains, what mines were there?
A. There were quite a number of mines working and a great many claims located in the place called Washington Camp, about 5 miles
363 south of Mowry.
Q. Were there miners there in the camp?
A. Yes, sir.
Q. About how many people were in that camp at the time you first came in there?
A. I could hardly say; there was quite a good many, 50 or a 100.
Q. And what were they doing?
A. They were mining for lead and silver.
Q. Do those mines down there continue to be worked until this time?
A. Yes, sir.
Q. What is the value of those mines?
A. They are very valuable.
Q. Will you now name over some of the valuable mines there?
A. The Duquesne Group, about 9 in the group.
Q. What do you know about their value?
A. I know they value it at $350,000.00.
Q. Do they work them?
A. Yes, sir.
Q. What do you know about the Pride of the West?
A. The Pride of the West has a wonderful showing, and was sold within the last 60 days for $125,000.00, so I have been told.
Q. For how long has that Pride of the West been worked?
A. Ever since I came in the Territory.
Q. Do you know a claim called the Holland Mines?
A. Yes, sir; I have been there; it is an old location; it was an old location when I came there and kept up ever since; it has been worked at different times ever since.
Q. What do you know as to its worth?
A. It was sold two or three times for $166,000.00, and is now valued at from $50,000.00 to a $100,000.00.
Q. Do you know any other claims and old locations and their value?
A. The Pool Group of mines.
364 Q. And how long have they been worked?
A. Ever since I came there.
Q. And their value?
A. They are valued at $60,000.00.
Q. What others do you know?
A. I know the Empire Mine, an old location.
Q. How long?
A. I could not tell you; it was being worked when I came there.
Q. Been claimed as mining location ever since?
A. Yes, sir.
Q. What do you know about the value of the Empire?
A. They value it at about $40,000.00.

Q. And what other mines do you know the'e, if you know any?

A. I know the Belmont and the San Antonio mines; they are very old mines; worked before I came there and been kept up ever since.

Q. What do you know of their value?

A. They value the Belmont at a hundred thousand dollars, and the San Antonio at $75,000.00.

Q. Now look at this map; here is Mowry?

A. Yes, sir.

Q. Here is Washington Camp?

A. Yes, sir.

Q. This black line which runs north and south, all these mines you have named lie to the east of that black line, I would say they are all east of it and in the vicinity of that black line?

A. Yes, sir.

Q. Does that map approximately and correctly represent Harshaw, Mowry, and Washington Camp?

A. Yes, sir; I would think so.

Q. And what is the topography of that country immediately to the right of that black line, whether hilly, rolling, mountainous, or what?

A. It is a hilly country.

Q. And what as to its being mineral bearing?

A. It is mineral bearing all the way.

Q. Always been so, I understand?

A. Yes, sir.

Q. Now when did you first go down in the San Rafael Valley?

A. Some time during '80.

365 Q. And what settlement did you find down in that valley?

A. I found a man named Slavens living down there.

Q. Can you tell about where he lived?

A. I think so; at La Zanja on this map; it was what they called Old San Rafael Ruins; it would be down to these ruins; there is a long building there, 6 or 8 or 10 rooms.

Q. How was that place known at that time?

A. That was called Enriquez place.

Q. Did you hear any other name for it?

A. I suppose it was San Rafael Ruins.

Q. Who was living there, if anybody?

A. Enriquez was living there, a family or two.

Q. Did you look around considerable at that time?

A. Yes, sir.

Q. Did you see any monument of stones there piled up?

A. I do not remember of seeing any.

Q. Did you see any down there on that trip, any monuments of stones?

A. No, sir; I believe we did down on the line between Mexico and the United States.

Q. About how far was Enriquez place from La Zanja or from the line?

A. I think it was about one mile south of La Zanja.

Q. Was there a place there where a man named Sheehy lived anywhere on that valley—do you remember Sheehy?

A. Yes; he lived south of the Old San Rafael Ruins.

Q. And about how far south did he live on this map?

A. At that point.
Q. Do you know the place called San Rafael ranch?
A. Yes, sir.
Q. What direction is Sheehy's place from that?
A. It must be pretty near east.
366 Q. Was there anything at that point when you first went down there at San Rafael ranch anywhere?
A. I think there was an old smelter there.
Q. How about water; do you remember whether there was any running water there or not?
A. I think there is a well of water there.
Q. Is there a spring in that part of the country?
A. I do not remember whether there was or not.
Q. How about settlements when you first went in there?
A. There was two houses down close to the United States monument, Lochiel; I think they were across the line; I am not certain about that; it is very close to the road, right in the valley.
Q. Any other settlements at Lochiel?
A. There was some settlements; people living there.
Q. About how many people were living there then?
A. I do not remember; there was quite a number of houses; had been a smelter there.
Q. Belonged to these mines at Washington Camp?
A. Yes, sir.
Q. Was this smelter at the San Rafael ranch, or was it an old smelter?
A. I do not know whether it was ever run at all.
Q. And what was on that ranch in the way of use or occupation of it?
A. This Mr. Slavens was living there; he had a lot of cattle.
Q. Anybody else have cattle in that valley?
A. Yes, sir; several Mexican families had cattle; Enriquez had cattle on there, I believe, and several others; I forget their names, and there is, I believe, Parker family and some others were living there.
Q. Where did they move to?
A. Eastern part of the Huachuca, up in that Potrero Canada.
Q. How far up near the Huachucas did they live?
A. I should think—I forget exactly—somewhere around here; I do not remember exactly.
367 Q. Anybody else living in there when you first went in there?
A. I think there were several parties living in there, but I forget.
Q. When did you first meet Mr. A. A. Green down in that country?
A. Some time in the summer of '80; I first met him here in Tucson.
Q. What negotiations did you have with Mr. Green?
A. I made a contract with Mr. Green for that ranch, for that grant.
Q. Did you go down to the grant with him?
A. He came here.
Q. What did you do about it?
A. I entered into a contract with him for it.
Q. And that is the contract that has been offered in evidence here?
A. I presume so; I never had but one with him.
Q. About how much did you pay?

A. During the time that I had it until I sold it to Mr. Cameron I paid him about $7,000; I paid him at different times.

Q. And did he show you his expedi nte to his grant?

A. Yes, sir.

Q. Did he claim to be in possession of anything, and if so, what did he claim to be in possession of in the way of land or grant?

A. He did not claim to be in possession of anything; just showed me what that grant was.

Q. And how about the great many people living on it; he did not claim they were his tenants or anything of that kind?

A. No, sir.

Q. What was this contract?

A. I forget; the contracts are in evidence——

(Objection to this evidence upon the ground that it is not competent because the contracts are in evidence.)

A. If the grant should be confirmed for sixteen square leagues I was to pay fifty thousand dollars, but if it went to the outside
368 boundaries as claimed by Green including that much land I was to pay two hundred thousand dollars.

Q. And who was to bear the expense of making this fight in the different courts?

A. I was.

Q. After you made this contract with him what did you do as to taking possession or occupancy or anything of that kind?

A. I think the first thing was to buy German and Slavens out; I bought their title, their possession and cattle.

Q. Now at the time you were making these negotiations, did you know of a survey that had been made there by Mr. Allis?

A. Yes, sir.

Q. And did you find any evidence of that survey on the grant?

A. Yes, sir; I found stakes.

Q. Where did you find stakes of that survey?

A. The center stake was right in front of the Slavens house, at the cienega, at this place called Cienega and La Zanja.

Q. On which side of the Santa Cruz River was that stake?

A. It was on the west side.

Q. About how far from the river?

A. It was I think very close to the river.

Q. Just describe that stake?

A. I think there was a few stones around it.

Q. Any marks on the stake?

A. Yes, sir; but I forget just what.

Q. What other evidences of a survey on the grant did you find?

A. There were several other stakes.

Q. Did you find them before you made this contract with Green?

A. I think not.

Q. What else did you do?

A. I bought cattle from three or four different Mexican people.
369 Q. Buy out their possession too?

A. Yes, sir.

Q. Where did Green say that the monuments of this claim were; where did he go and show you?

A. He showed me, I think, the one at the San Antonio pass first—that is, the southwest corner; showed me a large pile of stones, with some little hills, or two little hills.

Q. How did that pile of stones look?

A. Two or three wagons of stones piled around near the road or pass; trail through the mountains.

Q. Was that a wagon trail?

A. Horse trail.

Q. What other monuments or pile of stones did he show you?

A. Small one, called the center of the grant of the town of Santa Cruz; small monument in the center of the grant.

Q. What kind of a monument was that when you first saw it?

A. That was a small monument, not over two feet high, and made of stone; small one.

Q. What other monuments or piles of stone did he show you?

A. I think these are the only two.

Q. Did you make search for any other monuments or piles of stones?

A. Yes, sir.

Q. Did he show you any monument or pile of stones at the center?

A. He showed me the stake put there by Allis as the center of the grant.

Q. Did he show you any other pile of stones or monuments?

A. No, sir.

Q. Did you see any pile of stones near the old San Rafael ruins which you spoke of?

A. No, sir; I do not remember of seeing any.

Q. Did you go over the ground and look for them?

A. Yes, sir.

Q. Now, going out east of La Zanja into that country, out east from the Old Ruins, 6 or 8 miles, did you cross that river and mesas and look for any monuments?

A. I think not.

Q. Did you cross the Potrero?

A. I think not.

Q. Did you find any monument at the east center?

A. No, sir.

370 Q. Did you go to Igo's spring?

A. Yes, sir.

Q. Who was there at that time?

A. I think a man by the name of Holmes lived there.

Q. Who was with you the first time you went there?

A. I think Green was with me the first time I went there.

Q. Did you look for monuments around there?

A. Yes, sir.

Q. Did you find any?

A. No, sir.

Q. Did you ever after look for monuments in the neighborhood of that spring?

A. Yes, sir.

Q. Did you ever find any?

A. No, sir.

Q. Where did you look?
A. I looked all around that spring; I looked in every direction.
Q. North, south, east, and west?
A. Yes, sir.
Q. Is there a range of mountains south and southeast from that spring?
A. Yes, sir.
Q. Did you look around that range of mountains?
A. I looked up to pretty close to the mountains which came down toward the spring.
Q. Is that range part of the Huachuca range?
A. Yes, sir.
Q. Now, let us go back in the valley of the Santa Cruz, in the neighborhood of the Old San Rafael Ruins and around there; you know what Mr. Cameron calls the San Rafael Ranch?
A. Yes, sir.
Q. Now, going from that ranch down the river valley, do you know of any ruins in that part of the country?
A. No, sir; I think not.
Q. East of the Old San Rafael Ruins, what is your view?
A. Rolling hills.
Q. And extending back towards the horizon, north and northwest, what is there five or six miles back?
A. Rolling hills, valleys, plains.
Q. And looking northwest, do you see any peak, sharp, well-defined peak?
A. Yes, sir; up the valley there is one peak that is very promi-
371 nent, northwest, the top is seen in that valley, the San Rafael valley; you can see it from almost anywhere in the valley, unless you get down pretty low below, the lower end of it.
Q. Standing at the point La Zanja and looking at that peak, what direction would you be looking?
A. Be looking northwest.
Q. And how would that peak show to you?
A. It is very abrupt and lone peak.
Q. Suppose you take a horse and ride from La Zanja out in this way, what change so far as in the appearance of that peak would there be?
A. It would be the same.
Q. When you first went down there what name was given to that peak northwest of La Zanja?
A. The Penasco.
Q. Did you ever hear any other name for it until this case was commenced here in this court?
A. No, sir.
Q. What name was given to it by Mr. Green?
A. The Penasco.
Q. What name was given to it by other people who lived there?
A. The Penasco was the only name I ever heard.
Q. Do you remember riding on that peak with Mr. Cameron?
A. No, sir.
Q Did you ever go on the top with him?

A. No, sir.

Q. Did you ever tell him that that peak was Saddle Mountain, and that that peak was not the Penasco?

A. No, sir.

Q. Never had any conversation with him about it?

A. No, sir.

Q. Did you ever understand that that particular peak was not the Penasco?

A. No, sir.

Q. Until the last few years did you ever hear that peak called anything else but the Penasco?

A. No, sir.

Q. Did you hear that second peak was called the Penasco by anybody until this trial by Mr. Cameron and Mr. Roskruge?

372 A. Never heard anybody else; no, sir.

Q. Was you ever on that peak with Mr. Roskruge, the second peak marked Penasco?

A. No, sir.

Q. Looking from La Zanja towards the northwest can you see the Saddle Mountain?

A. Yes, sir.

Q. Did you tell him that peak marked the Penasco was the Penasco?

A. No, sir.

Q. What mountain did you tell him was the Penasco?

A. The one which is given there.

Q. The one marked Saddle Mountain?

A. Yes, sir.

Q. Did you tell Mr. Roskruge that peak marked Saddle Mountain was the Penasco?

A. Yes, sir.

Q. Did you have a survey made by Mr. Roskruge of this grant?

A. Yes, sir.

Q. Where did you go when you went north?

A. We went north from La Zanja and we ran up two hundred cords.

Q. Did you find at that point a tree with a cross on it?

A. No, sir.

Q. Did you look for it?

A. Yes, sir; never saw any tree with a cross on it.

Q. Did you find there water in a gulley running towards the west and towards what you all call the Penasco?

A. After we got perhaps eight miles from La Zanja the water would run towards the Penasco, the Santa Cruz water, and then turn and come back in the Santa Cruz.

Q. Do you know where Mr. Cameron has that windmill over there

A. Yes, sir; to a point directly east of that and then turn towards what I call the Penasco; the water would run in that direction and then turn and come back in the Santa Cruz, a part of it.

Q. That is north of Saddle Mountain, called by you the Penasco. About where in that country east of what is marked Saddle

373 Mountain on that map, which you call the Penasco, is the divide from which the water runs in the Santa Cruz and the Sonoite?

A. It was very close to the Saddle Mountain; just go on the other side it runs towards the Sonoite; there are two or three water courses that run towards the Sonoite.

Q. And where do they begin to run towards the Santa Cruz watershed?

A. Right close to the Saddle Mountain, and a little north; and in below, south, it would run in the Santa Cruz.

Q. And going a little north of Saddle Mountain, how would it run?

A. It would in the Sonoite.

Q. That is about the watershed of the divide there?

A. Yes, sir.

Q. After that water leaves the Saddle Mountain to go to the Santa Cruz does it run south or east of the windmill that Mr. Cameron has there?

A. I think it comes in south of it, but I am not certain about that.

Q. Where would it strike the Santa Cruz, how far north of La Zanja?

A. Three or four miles above La Zanja.

Q. Did you ever find north of La Zanja at a distance of 2 leagues, or 200 cords, or 300 cords, or 400 cords, any place anywhere a tree with a cross on it?

A. No, sir.

Q. Is that country covered or interspersed, scattered, with oak trees?

A. Yes, sir.

Q. Are there level table-lands cut by gullies, table-lands called mesas?

A. Yes, sir.

Q. These mesa or table-land are full of gullies?

A. Yes, sir.

Q. Is there such a place 3 or 4 hundred cords north of La Zanja, 6 or 8 miles north of La Zanja, a gully that runs towards the Penasco, as you call it?

A. Yes, sir.

Q. And are there oak trees on the mesas?

A. Yes, sir; I think so; oak trees around the center of it.

374 Q. What are these Canelo Hills? What are they off of these table-lands?

A. They are very rough range of hills.

Q. Round tops or sharp peaks?

A. Both round tops and sharp peaks.

Q. Are there many passes through that range for wagons?

A. No, sir; I only know of one.

Q. Now the waters of this Canelo range on the southwest side, where do they drain to?

A. Southwest side they drain towards the Sonoite, where you come up from the southwest, and off west of the divide they are between the flow of the Sonoite and the Santa Cruz; I would think just about where the horse corral is.

Q. These Canelo Hills or range of mountains, do they run towards the southeast? Do they go south and join the Huachucas?

A They join the Huachucas; yes, sir.

Q. Do you know a place over there called Tanners Pass?

A. Only by hearsay.

Q. Where is that with reference to the point where the Canelo Hills joins on to the Huachucas?

A. It is just south of where they join it.

Q. It is the only one that goes through these hills?

A. Yes, sir; at that point or near the point where these Canelo Hills join to the Huachucas; I have not been there for the last ten or twelve years.

Q. ; all I know is that a man named Campini has some mines up in there, copper mines and gold mines.

Q. What about water?

A. Some very nice springs of water up there.

Q. And how far are they from the pass?

A. They are just close to the pass of the Canelo range; also in the Huachucas on the point of the junction of the two.

Q. Would that water run out of these springs into the Potrero Creek?

A. Yes, sir.

375 Q. Campini has lived there for some time?

A. Yes, sir.

Q. Do you know a man named Collins there?

A. I think he lived in the same neighborhood at one time.

Q. When was it you sold out to Mr. Cameron?

A. Some time in '83.

Q. At that time did you surrender him the possession?

A. I merely sold Mr. Cameron, my agreement that I had with Mr. Green; he just took my place.

Q. When you sold you assigned that to him and stepped out?

A. Yes, sir.

Q. If you stand at a point east of Saddle Mountain 6 or 7 miles and turn your face towards the west, how would that peak marked there, the Penasco, look to you?

A. It would look like a very abrupt hill; it was very rocky.

Q. And what the Saddle Mountain, which you call the Penasco—the one they call the Saddle Mountain—how would that look?

A. It would look like a very steep, rocky hill.

Q. And that is the one you call the Penasco?

A. Yes, sir.

Q. Where does the water come from that comes from these peaks?

A. It comes from the Canelo Hills.

Q. Does the water run between these peaks?

A. Yes, sir.

Q. Saddle Mountain would be northeast from Harshaw?

A. Yes, sir.

Q. How far would Harshaw be from Saddle Mountain?

A. About 3 miles, I should think.

Q. And the Penasco?

A. About 8 miles.

Q. And what is the appearance of the Penasco—they call the Saddle Mountain—as to color?

A. A large brown rock.

Q. Now, standing and looking towards the west, would you see any red mountain down in the valley between the Saddle Mountain and what

they call the Penasco, down in that neighborhood somewhere, near Harshaw?

376 A. Yes, sir.

Q. Now, what is the general color of this range of mountains just west of Harshaw?

A. Large red mountains.

Q. And how far south does that red coloration extend on that range?

A. Down as far as Mowry Gulch, up to the west of Mowry Gulch; there is a pass between the mountains.

Q. What color is on the east side of the same mountains?

A. It is red.

Q. Take the hills between what is marked Saddle Mountain and the Penasco, between these two peaks, what color have those hills?

A. Red; small hills are red.

Q. These two peaks are high peaks, the Saddle Mountain and the Penasco?

A. Yes, sir.

Q. The Sonoite Mountains lie to the west of these peaks?

A. Yes, sir; mostly to the west from there.

Q. Any red mountains between these peaks?

A. Yes, sir.

Q. Do you remember being at Igo's spring with Mr. Cameron?

A. Yes, sir.

Q. Did you show him any monuments up there?

A. No, sir.

Q. Did you know of any at that time?

A. No, sir; never saw one at this point.

Q. Did you show him any at the center of the grant, or near the ruins of the San Rafael de la Zanja grant, show him any monument?

A. No, sir; only the one at Slaven's place on the Allis survey.

Cross-examination by Mr. HENEY:

Q. Since selling that grant to Mr. Cameron there has been considerable bad feeling between you and him, has there not, at different times?

A. Yes, sir.

Q. At the time you sold him that grant you were so anxious

377 you did not have to make any representations about where it went or what it contained, did you?

A. I think that is pretty near right; he was very anxious to buy it and I was very anxious to sell it.

Q. Did you take him around to the grant to show him where it extended to?

A. I think we spent five or six days on the grant.

Q. And that was in March, '83, was it not?

A. I forget; it was in the spring of '83.

Q. The first place you came to in taking him up—you came from Crittenden in a wagon?

A. I think so; or horseback, I forget which.

Q. The first place you stopped was at the red mountain that has been testified to by these witnesses on the part of the claimants as being the northwest corner of this grant?

A. Yes, sir; we passed that place in going up.

Q. Did you stop there to eat your dinner with Mr. Cameron?
A. I could not remember that.
Q. Did you take him up to the top of the red mountain?
A. No, sir.
Q. Did you point out to him the red mountain as being one of the corners of the grant, as the northwest corner of the grant as represented by Green and the expediente?
A. We both took that to be the northwest corner of the grant; yes, sir.
Q. Did you take Mr. Cameron to the San Antonio Pass?
A. I think I did.
Q. Did you show him a monument there?
A. Yes, sir.
Q. And told him that was the monument of the grant?
A. Yes, sir; I told him that was the monument that was pointed out by Green and also the monument claimed by the Santa Cruz people as their monument.
Q. Did you take him to the Carricillo spring, the place where Mr. Igo lived; and did you tell him that Carricillo spring was the spring called for in the title papers?
A. Yes, sir.
378 Q. You do not recollect of ever showing him a monument near there?
A. No, sir; I know I did not.
Q. Are you never mistaken in your life?
A. Yes, sir.
Q. And you do not recollect now that you showed him any monument?
A. No, sir.
Q. Might not it be possible that you did?
A. I think not; I was there several times and never saw one.
Q. Did you ever take the road from Igo's place and travel around the road for about a mile and going around found the monument?
A. I think I was over that road one time to Huachuca.
Q. Did you ever go there looking for your northeast monument?
A. I do not think I ever went from that spring looking for a monument.
Q. Did you recognize that hill as being one near to the east of Igo's?
A. No, sir; I did not.
Q. There may have been a monument there at that time for all you know?
A. Yes, sir.
Q. At that time you did not know where the north center monument was, did you; never had it pointed out to you?
A. No, sir; we never found it.
Q. You had made some search for it?
A. Yes, sir; but had not found it.
Q. While Mr. Cameron was around there did you ride over to the place you call the Penasco?
A. I presume we did; we rode most everywhere on the grant, but did not ride to the top of it, as he said the other day.
Q. When did you go to the top of Saddle Mountain?

A. I went on top of it with Mr. Roskruge.

Q. When was that?

A. It must have been in '80.

Q. Is that the only time that you have been up there?

A. I may have been up there with Mr. Cameron.

379 Q. Are these the only times that you were on Saddle Mountain?

A. I may have been up several times; I think I have been; I am not certain about it.

Q. I believe you said from a point over here about eight miles east of the point marked Saddle Mountain on this map that you could not see the point marked "Penasco," did you?

A. Yes, sir; I think that is right as far as I remember.

Q. Saddle Mountain, the place you call the Penasco, is a good deal further south of the place marked "Penasco?"

A. Yes, sir.

Q. Do you recognize this photograph of it?

A. It is something like it; I would not recognize this; it is about like that; it is a very rocky peak.

Q. Being on top of that Saddle Mountain with Mr. Cameron showing him the grant, would not it have been very probable that that looked like the Penasco?

A. No, sir; I had known what the name of Penasco was, and that hill was not as brown as the Penasco, and we looked for no other penasco while we were on top of it.

Q. Did you know what penasco meant at that time?

A. I think he had explained it to me; it was a large rocky peak; something of that kind.

Q. When you were on top of Saddle Mountain, it had no appearance of being a rock, did it?

A. It was covered with rocks on the top; I would suppose that that entire mountain was a solid rock.

Q. The same character of rocks that you find on all mountains?

A. On a great many you can.

Q. You might right there close to it?

A. Yes, sir.

Q. Trees growing up there?

A. I do not remember; I think there is brush growing up there; I do not think there is any trees; there may be.

380 Q. At the time you sold this grant to Mr. Cameron you represented to him that it took in all that mountain country, did you not?

A. Yes, sir; I showed him the points that were pointed out by Mr. Green as the outside points.

Q. That he would get the title to these mountains?

A. No, sir; I never thought that these mountains would go with the grant?

Q. Do you own the Marshal mine?

A. Yes, sir.

Q. Did you insist and expressly reserve the Marshal mine from the grant?

A. I think I asked that should be done.

Q. You did ask for and did get it?
A. Yes, sir.
Q. Who did you buy the Marshal mine from?
A. I forget now.
Q. You all made the trade with the same house, did you?
A. I think so.
Q. What year was that in?
A. That was in '80.
Q. Was it after you had purchased this grant or before?
A. I think it was before.
Q. Where is the Marshal mine; how far from the Hermosa that you spoke of?
A. They almost join; small piece of ground between.
Q. Did you know at the time you bought the Marshal mine from—did you have a lease from the owners of this grant extending for 28 years?
A. Not that I remember.
Q. Have you seen that lease?
A. I think not; I do not remember that I ever saw it.
Q. Did you have any talk about this grant at that time—at the time of the purchase?
A. I do not remember that I did at the time; I may have done so.
Q. If you did, you have forgotten?
A. Yes, sir.

Q. While you owned the grant, didn't you employ some attor-
381 neys by the name of Earl and Bennett to have them use their efforts to confirm the grant, to have Congress confirm it, in Washington?
A. Why, yes; I undertook to employ some attorneys in Washington, but I forget their names.
Q. To have it confirmed for four square leagues?
A. I think so; I think I was advised to have Congress confirm it for four square leagues and make a fight for the boundaries in the courts.
Q. Do you recognize that paper; whose writing is that?
A. Mine.
Q. Is that a copy you sent to Earl and Bennett?
A. I guess that is correct.
(Objection to it as being a privileged communication between client and attorney.)
Q. Is that your handwriting, Mr. Richardson?
A. I think; guess it is.
Q. Is that a copy of the letter you sent to Sheehy?
A. I think so; I sent him something like that.
Q. Do you recognize that?
A. Yes, sir.
Q. Is that a copy of the letter sent by you to the party addressed?
A. Yes, sir; I believe so.
Q. Is that a copy of the letter sent by you to the General Land Office?
A. I do not remember I sent that, but I presume I did.
Q. Is that your handwriting?

A. Yes, sir; I remember I sent a paper that Mr. Cameron said that it was lost when I demanded the ten per centum interest which I never got.

Q. That is the paper sent to you by him?

A. That is a demand. No attention was paid to it by Mr. Cameron, especially.

(We offer in evidence letter dated May 7, 1881. Plaintiffs' Exhibit F 64.

Also letter from A. A. Green to R. R. Richardson. Plaintiffs' Exhibit F 65.

382 Also letter same to same. Plaintiffs' Exhibit F 66.

Also letter same to same. Plaintiffs' Exhibit F 67.

Also letter same to same. Plaintiffs' Exhibit F 68.

Also letter same to same. Plaintiffs' Exhibit F 69.)

Q. You stated that the Duquesne group of mines are worth about five hundred thousand dollars?

A. That is about what they value them at.

Q. What do you value them at?

A. I would value them at that; I believe they are worth that.

Q. Do you know of their ever having been worked at a profit?

A. Yes, sir; I think that Fitzgeral worked them at a profit; he told me that he could; I can tell you so now.

Q. Do you know when the Duquesne mines were purchased that the purchaser refused to take them except A. A. Green gave his title to the mine to them?

A. I was told so, but I do not know it.

Q. There are some old ruins, are there not, at the place on this map marked Old San Rafael ruins, at a place about a mile south of La Zanja, some old adobe buildings?

A. Do you mean off to the east of the lower part of the valley?

Q. Just up on the mesa?

A. I suppose those ruins were part of Enriquez' place.

Q. Where is Enriquez' place from the La Zanja?

A. I think it is a mile or two miles down the valley.

Q. There are ruins right across in the Slavens place, are there not?

A. Not that I know of at that time. In the last few years I found there was an old Indian village there; what was supposed to be an old Indian village; I do not know if there is; it looks as if there had been remains of one house of ten rooms; that is near Enriquez' place; but this has the appearance of an old Indian village.

383 Q. In going up the valley from the old ruins—the place marked old ruins here—that is the place you spoke of, the village, in going up the valley about a mile, going north?

A. Yes, sir.

Q. And as soon as you get on that mesa anywhere as you travel there towards the north—when you get up two or three miles, can you see this Penasco that is marked Penasco on this map?

A. I believe not; I do not think it would be possible.

Q. Have you ever looked for it in traveling up there?

A. No; I do not think I ever did; I do not remember of having seen it from the valley. I do not believe you can.

Q. You won't say that you can not?

A. No, sir; I do not think you can stand anywhere in the vicinity of the old ruins and look over towards the north and see it.

Q. Well, if a man wanted to pick a prominent point as a landmark, what is the most prominent point over there that is easily discovered?

A. The peak right there at Washington Camp—the El Caloso.

Q. It is the one that a man would select as being easily discovered, is it?

A. Yes, sir.

Redirect examination by Mr. BARNES:

Q. When you rode down to Sheehy's where was he living?

A. I think at the same place they are living now, just two or three miles below Slavens' place.

Q. They were inside of the four square leagues?

A. Yes, sir.

Q. Where was Callahan living?

A. Right close to Sheehy.

Q. Was he inside of the four square leagues?

A. He was at that time.

Q. You did not steal these *these* horses you sold to Cameron?

A. No, sir; they were stolen and taken to Mexico on the last end of the negotiations.

384 Q. You did not get that ten per cent you were talking about?

A. No; I expect to get that yet.

Q. At that point you laid down the white man's burden and let him take it up?

A. Yes, sir.

Recross-examination by Mr. HENEY:

Q. It has been quite a heavy burden, has it not?

A. Yes, sir.

Q. Been a great many threats to take his life around Marshal mine and that vicinity?

A. No; I never heard any such threats.

Q. You did not construe them into that?

A. Perhaps not.

Q. Don't you think his life was in danger?

A. Yes, sir; many times.

Further redirect examination by Mr. POPE:

Q. Which side of the Santa Cruz River are these ruins that you spoke of that were at Enriquez' place?

A. They are on the west side of the valley.

Q. On which side is this Indian village that you referred to?

A. On the east side.

Q. And Sheehy's place is in between these two on the east side of the river?

A. Yes, sir.

Q. Did you ever hear of these old Indian ruins at the place called Old San Rafael?

A. No, sir; not until this trial.

Recross-examination by Mr. HENEY:

Q. What did you mean while ago when you said that Slavens was living at the Old San Rafael?

A. We always called that the Old San Rafael—that is what everybody called it—that is where Allis made the center stake.

Q. That is what everybody called that place where Slavens lived?

A. That is what I always heard it called.

Q. And the lower place, you spoke of that as the Old San Rafael Ranch?

385 A. These ruins are right over from Slavens'.

Q. This Indian village is over a mile across; it is just across towards the east up on the mesa?

A. Yes, sir.

Q. The other side of the valley?

A. Yes, sir.

Further redirect examination by Mr. POPE:

Q. On the other side of the valley of the Santa Cruz?

A. Yes, sir.

Q. And at the time you first saw these Indian ruins did you see any adobe corrals down there or adobe houses?

A. No, sir.

Recross-examination by Mr. HENEY:

Q. Do 'no' what the appearance of an adobe house is after it has fallen down a number of years?

A. There were rocks and mounds of earth.

V. H. IGO, sworn on the part of the Government, testified, upon direct examination by Mr. BARNES, as follows:

Q. When did you first go down in the country in what is now called San Rafael de la Zanja?

A. Some time in '82.

Q. Did you make a settlement there?

A. Not in the valley.

Q. Is there a spring over there, over in what they claim now to be inside of the grant?

A. Yes, sir; in the winter of '81.

Q. Where did you find that?

A. I went to the point of the Huachuca Mountains.

Q. Who was living there?

A. A man named Hanes.

Q. What did you do about it?

A. He wanted to sell his claim to me and I was wanting to quit railroading and I told him I would buy it.

Q. Did you buy it?

A. I did.

Q. What was there?

A. There was several springs, small springs.

Q. And what did you do with them?

A. I went to work and dug them out and make them, made a pond of them.

Q. When did you do that?

A. I did that in the Spring of '82.

386 Q. How much water did you develop there?

A. Considerable; a stream like the size of your leg, and the other one about the same; there is one in the lake and one out on the edge of the lake.

Q. Now, have you lived there ever since?

A. Yes, sir.

Q. And what improvements have you there?

A. All kinds of improvements; built houses, two of them; the second house I am in; the first one burnt down; made an orchard, dug three lakes, developed five springs; put out over a thousand fruit trees, well nigh two thousand.

Q. Now, how much land have you irrigated from the water you developed?

A. I presume about 12 acres.

Q. In a general way, about how much have you expended in improvements?

A. Considerable; I could not well say; about 8 or 10 thousand dollars.

Q. When you went there a man named Hanes lived there?

A. Yes, sir.

Q. Anybody live in that neighborhood and near him?

A. There was a camp below there called Ven's camp.

Q. And how far away was that?

A. Two miles.

Q. And where?

A. A little south of west.

Q. And in what canon was that?

A. Called Sycamore Canon.

Q. Is there a canon over there called Cochise?

A. Yes, sir.

Q. Is that near there?

A. About 2 miles and further northwest.

Q. Was there a settlement there?

A. Right beyond there was another ranch.

Q. Who was there?

A. There was some man called O'Donnell.

Q. Is it inside of what is now claimed as the boundaries of this grant?

A. Yes, sir.

Q. What has become of him?

A. He lived out here; he sold out to Rice and went down a little further and inside of the boundaries of this grant; he was living northeast of the Canelo Hills.

387 Q. Who else?

A. A fellow by the name of Smith at that time—he used to live there—and a Frenchman, I forgot his name.

Q. When you went there what evidences was there of a grant, that indicated a grant—a Mexican grant?

A. Nothing.

Q. Any monuments?

A. Not one.

Q. Any claim of a Mexican grant?
A. No, sir.
Q. Any boundary marks there?
A. None.
Q. Now, near the road from your place, that is, towards Huachuca—is there a monument of stones there now?
A. Yes, sir.
Q. Is that a photograph of your spring when you went there, about that time?
A. Yes, sir; that house is further down; I built a new one.
Q. Look at that photograph. Do you recognize that as being down in there now?
A. It looks like a big pile of stone like is there now, right close by the road; the road goes on the south side.
Q. You have seen that monument many times; was that there when you moved there?
A. No, sir.
Q. How long after that was that monument put there?
A. It was put there, I think, in '84 or 5.
Q. And prior to '84 or 5 was that monument there, as a matter of fact?
A. It was not. The road goes on one side and this monument is right in the road.
Q. Now, as a matter of fact, was that monument there at all before '84 or 5?
A. No, sir.
Q. Do you know when it was built?
A. Yes, sir.
Q. Well, who had been around there a short time before you saw that monument; who was there a short time before you first saw this monument?
A. I saw it the next day. Mr. McLaughlin and Colin Cameron, that gentleman there [pointing to Mr. Colin Cameron], and a fellow
388 by the name of McCarty, another man by the name of Snyder, another old gentleman, Elias, I think.
Q. What was McLaughlin's business?
A. He was a surveyor.
Q. When did you see them there before?
A. I saw them there in the morning.
Q. Was that monument there before or after you saw them there?
A. I saw them every day before and the same day after.
Q. Before these men came there at that place, was that monument there?
A. No, sir; that was not there.
Q. Did you have any talk with them?
A. I did.
Q. Did you have any pretty hot talk?
A. Yes, sir; if you wish I will tell you partially what was said.
(Objection to that.)
Q. Did you give your assent or consent to anybody to put that monument there?

A. No, sir; I had some idea they were going to run in this lake. I went out when I saw them coming towards my place; the first man was McLaughlin; I met him at the fence; I says to him, "Are you a surveyor for the Government; are you a Government surveyor?" He says, "I am." I says, "Are you surveying for the Government or for Mr. Cameron; who pays you?" Says he, "He pays me." Then says I, "You don't enter my enclosure or I will do something to you," and started back to the house expecting to get a gun standing in the corner of the house. My wife had seen me and I did not get it, and then Mr. Cameron comes and we had quite a few hot words, and then Mr. McLaughlin comes inside to run a line so that they could put monuments all the way along.

Q. Did any surveyors return after that, any time?

A. Yes, sir.

Q. How long after?

A. I think it was it '86; '85 or 6; maybe '87.

Q. Who was there?

389 A. Mr. Roskruge was over there; I did not see Mr. Colin Cameron; I saw Mr. Brewster Cameron; I went out to watch for them; Mr. Brewster Cameron came up to my gate.

Q. Do you know the contour of the country after you go southwest from your place, to the southwest of the Canelo range?

A. Yes, sir.

Q. And when you go down in the Santa Cruz Valley and then turn around and look north and northwest do you see any peak—main peak?

A. Yes, sir.

Q. What peak is that?

A. The Penasco.

Q. Do you know any other name for it?

A. No, sir.

Q. From all the country from the San Rafael Valley is that peak visible?

A. You can see it most anywhere looking north from the valley.

Q. Never heard it called anything else?

A. No, sir.

Q. Is that the place on this map marked "Saddle Mountain?"

A. I think so.

Q. That is the way it looks to you?

A. Yes, sir.

Q. What name did you first hear of that spring of yours?

A. Did not hear any name; never heard it called any name.

Q. What is the name of that spur that comes to your place?

A. Huachuca.

Q. Did you ever hear that Huachuca Mountain called the Sierra del Cobre?

A. Never.

Q. Do you know of copper mines on that Huachuca range?

A. Yes, sir.

Q. How far are they from your place?

A. They are eight miles, and perhaps farther, south.

Q. Do you know the point where the Canelo range joins or comes near to the Huachuca range?

A. Yes, sir.

Q. About how far south of your spring?

A. It must be 15 or 16 miles.

Q. Do you know a place called Tanner's Pass?

A. Yes, sir; it is south and east.

Q. How much south?

A. I could not say how much south and east.

390 Q. Who was living in there at that time, if anybody, when you first went there?

A. The Parkers, Mr. Joe Campini, an old man named Pat Maloney; and others came immediately after I went there, two or three years after, and Mr. Collins.

Q. About where did he locate?

A. He located a little north and northwest of Parker's, in the canon.

Q. Do you know any copper mines up in that country?

A. Parker's canon is to the left as you go south, not north; from Tanner's Pass it would be west, not north.

Q. What direction from Campini's?

A. It would be right close by there.

Q. There are several copper locations in that country?

A. Yes, sir; several of them.

Q. Do you know of a mine that Campini has there?

A. Yes; it is a gold mine.

Q. Do you know of any water in there?

A. Collins had lots of it. It is a spring. You might call it a large spring. It runs for quite a little ways between Collins's and Campini's place. There is quite a spring there.

Q. Where does the water from Collins's and Campini's spring drain into?

A. It runs southwest into the Santa Cruz and Potrero Creek.

Q. Do you know where the horse corral is over in there southwest of the Canelo range?

A. I think so.

Q. And the windmill Mr. Cameron has there?

A. I think so. It is thereabout in the neighborhood of the divide where the water runs both in the Santa Cruz and the Sonoite.

Q. Is that a rolling country around the horse corral?

A. It would be called rolling country; cut in gullies some.

391 Q. What general direction do these gullies take in that country?

A. Towards the Santa Cruz, towards the south from the horse corral.

Q. What main peak would you see, if any, do you see over there?

A. That Penasco.

Q. Marked on this map Saddle Mountain?

A. Yes, sir.

Q. What is the nature of the trees that grow in there?

A. Evergreens.

Q. Now this monument which is east of your spring about a mile and a half, is that on higher or lower ground than the altitude of your spring?

A. Lower.

Q. Are there people living now on any water that is permanent there

inside of the boundaries as marked on that map in there in the neighborhood of the Cochise line?

A. Yes, sir; Mr. Rice and Mr. McCarthy.

Q. In about how many of these canons are there running water?

A. Two large running streams part of the time from my spring southwest.

Adjourned until to-morrow.

MAY 20th, 1899, 10 a. m.

Cross-examination of Mr. Igo by Mr. HENEY:

Q. What was the earliest date at which you came to the place you are now living?

A. I came there I think in '81, a few days before Christmas.

Q. From what part of the country did you come; had you been living in this section of the country before that?

A. No, sir.

Q. Just came in Arizona at that time?

A. No, sir; I came from Texas; just came in Arizona.

Q. You say there was just one small house there at the spring at that time?

A. Yes, sir; a little bit of a house; it is there yet.

Q. You bought Hanes' house?

A. Yes, sir.

392 Q. He told you he merely had possessory title?

A. Yes, sir; that was all he claimed.

Q. There was none of the land purchased?

A. A little piece, not much.

Q. Did you notice around there at that time—have you ever seen the Mexicans burn mezcal?

A. No, sir.

Q. Notice any holes or the appearance of holes that they burn mezcal in?

A. I did not.

Q. Was there a road running by there at that time, a wagon road?

A. Yes, sir.

Q. Where did that wagon road run to?

A. I think it run to Huachuca and Harshaw; I think that road ran there before I went there.

Q. Did you ever travel over it in the direction of San Rafael Valley?

A. In '82 I did.

Q. Where did it run, about where?

A. It run across the divide of the Canelo and in the San Rafael Valley.

Q. Through what pass?

A. It is in the road; only one pass in that direction, except in a trail that is in a wagon road.

Q. Where is the trail, pass, through the Canelo Hills with reference to that wagon road?

A. North of the wagon road.

Q. About how far north?

A. I presume two miles; something like that; two or three miles.

Q. Where does that trail run to; does that run on through to your place?

A. The wagon road strikes on top of the Canelo Hills and comes on past my place.

Q. Where does the trail run after it runs west; does it run to Harshaw?

A. Yes, sir.

Q. This wagon road, after it comes through the pass, where
393 does it run after passing the Canelo Hills?

A. It runs to the Santa Cruz Valley.

Q. That was comparatively an old road when you first saw it?

A. I presume it was. I took no particular notice of it.

Q. I hand you plaintiffs' Exhibit F 37. Does that look like the pile of rocks that you saw then?

A. No, sir; it is more built up, sharp, higher now than then.

Q. When you first saw it, was that the condition it is in now? The time you first saw a pile of rocks at that place, did it look like that?

A. Yes, sir.

Q. And you say you saw people piling them there?

A. I did.

Q. Do you know McCarthy's first name?

A. I do not; he was just there at my house the evening before.

Q. And this old man (Mexican) and McLaughlin. Who else?

A. I did not know none of the names. I learned his name.

Q. You say they came the evening before you saw them, Mr. McCarthy, no one else?

A. The whole crowd was around. They did not come to my house.

Q. Where did they come?

A. Towards where the pile of rocks now is.

Q. About how far?

A. Maybe a very short distance.

Q. How do you know?

A. I went out to look for them that night and the next morning. I saw them there. I went around the spring. Mr. Sheehy was there.

Q. Did you see him come?

A. I seen him come to my place.

Q. From what direction did he come to your place?

A. He came from the south, I think; I do not know. I did not see him come. I may have seen him come, but did not have my mind on him at the time.

Q. What time of the day did you see any persons putting rocks there?

A. I seen them there in the morning, quite early. I could not
394 say. It was early—after sunup.

Q. How long after?

A. I could not tell exactly; just at sunrise.

Q. It was not more than an hour after sunup?

A. I did not notice.

Q. Do you swear it was not past sunup?

A. I could not say now how early in the morning. It was early in the morning.

Q. Had you had your breakfast then.

A. No, sir.

Q. Was it sunup when you got up?
A. No, sir; never is.
Q. You got up before sunup and went right out. How long did you remain out there?
A. Only a few minutes; maybe an hour.
Q. Until you got back?
A. Yes, sir.
Q. And you saw them putting rocks on the monument and placing it up and fixing it?
A. Yes, sir.
Q. Did you see them carrying rocks and put them on the monument?
A. Yes, sir.
Q. How close did you see them?
A. Maybe fifty yards, in the canon below.
Q. You were not on the road?
A. No, sir.
Q. And you were in the bottom of the canon?
A. No, sir.
Q. Where were you when you saw them putting these rocks on the monument?
A. At the rolling hill I selected in the canon. I kept out of sight.
Q. Do you mean you saw them putting the stones on the monument?
A. Yes, sir; they were all carrying rocks.
Q. How far is this monument from the edge of the canon?
A. Which canon?
Q. The canon that runs there?
A. There is one on the west side and one on the east side of it.
Q. How close to the canon on the west side of it?
395 A. It is about a hundred yards—little over.
Q. How far are the rocks from the top of the edge of the canon at its top?
A. I told you it is about a hundred yards.
Q. How far from the edge of the mesa where it pitches off from the canon?
A. The rocks come right square up to the edge.
Q. And the wagon road runs on the west side?
A. Yes, sir; on the south side, too; north and south.
Q. The wagon road runs around the south side and one on the north side, then the canon pitches off from that wagon road, does it?
A. I will show you exactly; the Huachuca Mountains run this way; this little spur is off here to the point of this mountain marked A; this road starts from my place; goes right around the hill in that direction; the monument is about here.
Q. Now I will mark this point you say the monument is with the figure 2; that is where the monument is, is it?
A. Yes, sir.
Q. The bottom of this paper is what direction?
A. North and north of west, both.
Q. How far from the monument does that canon commence to pitch off?
A. On the west side.
Q. Does the wagon road run on this west side?

A. No, sir; the road runs directly here until it gets to the south; one gets in on this side here, the south side.

Q. How far from the edge of the canon is that pile of rocks on the west side?

A. It would be about a huadred yards the way I guess from the upper edge of the canon, from the top of the mesa from the pile of rocks over here; you are going up grade all the time until you get to the monument.

396 Q. Is that canon off that way?

A. The canon is west; it is directly west.

Q. And from what direction does the road come?

A. The road runs directly west.

Q. You don't seem to understand.

A. What do you want me to show you?

Q. The way the road runs along.

A. It runs right along here, if you want to know where the road runs; it runs right there.

Q. I hand you plaintiffs' Exhibit F 35; does that look like the mountains called El Cobre?

A. I could not tell you; it looks like a mountain.

Q. Do you claim an interest in this grant?

A. I bought some shares in it.

Q. How long ago?

A. I think I bought them in '84; it will show on the records. I had them recorded in '84, I think, in March or February, '84.

Q. Was that before or after you saw this pile of stone?

A. That was before.

Q. You bought an interest in this grant about that time?

A. It was just before; I can not say; it was about that time or may be before.

Q. You thought your spring might come within the grant?

A. I bought it to protect myself in case they took me in.

Q. You claim an interest in it?

A. Yes, sir; I do.

Q. Mr. Cameron has never injured you in any way, has he?

A. No, sir.

Q. Mr. Cameron bought out O'Donnell's place down there which you testified about?

A. I do not think so; he bought out what is called the Smith and Fonda place.

397 Q. Did Mr. Cameron buy O'Donnell's first place?

A. No, sir; not that I know of.

Q. Didn't he buy the second place?

A. I think not; I do not know.

Redirect examination by Mr. BARNES:

Q. Were there any tules down in that spring anywhere like you see out at that window there?

A. There is nothing of that kind there.

Q. No carricillo of that kind?

A. There is nothing of that kind there; nothing at that spring of that kind; they come there since; there was none when I went there.

GEORGE J. ROSKRUGE recalled for further cross-examination by Mr. Barnes:

Q. You spoke the other day of putting up mineral monuments; I wish you would put on this map the place about where you put up the mineral monuments which you spoke about.

A. At Alta Mill site; I think it is U. S. mineral monument number 2.

Q. What kind of a piece of ground is that on?

A. It is on a hill.

Q. Well, describe that hill?

A. High hill.

Q. How high was it compared with what you call Saddle Mountain?

A. That I could not remember; may be as high as Saddle Mountain; it is a hill standing alone as prominent as Saddle Mountain; that is where I placed it, on the top.

Redirect examination by Mr. HENEY:

Q. Did Mr. Scott go to Santa Cruz before he took you and Mr. Richardson to the Saddle Mountain that time you went to make the survey?

A. No, sir; Mr. Scott never left us during the survey.

Q. Did he have any Mexicans with him to point out where Saddle Mountain was?

A. No, sir.

398 Q. Did you have any Mexicans with you?

A. No, sir; I had a Mexican driver.

Q. Did he point out the penasco to you?

A. No, sir.

Q. Did anyone?

A. No, sir; I do not think he knew anything about that.

Recross examination by Mr. BARNES:

Q. This map which is marked Exhibit D filed by plaintiff, A. A. Green, made in October, '80, you made this map of which this is a tracing, did you?

A. I could not tell you; I presume this is a copy of the map that I made of the survey of that grant in '80; the one I made for R. R. Richardson.

Q. I see on this map where the word Harshaw is written across on top of that hill; is that where that monument is?

A. That hill would be about there, about an inch north of the letter H in Harshaw, marked by a lead-pencil dot.

Q. Is this penasco which I see on this map the same peak that you have marked Saddle Mountain on the map filed here, plaintiffs' exhibit F 52?

A. I presume it is.

Q. Is Saddle Mountain indicated on this map now before you at all?

A. No, sir.

(We offer this map in evidence in connection with the cross-examination of Mr. Roskruge. Defendant's Exhibit No. 6.)

JAMES FINLEY, sworn on the part of the defendant, testified upon direct examination by Mr. Barnes, as follows:

Q. When did you first go to Harshaw?

A. In March, '80.

Q. And in what business?

A. Mining.

Q. Where were you mining?

A. In Washington camp.

Q. At the time you went down there what was the extent of Harshaw?

399 A. That was a little town, I suppose, of 250 or 300 people, upper town and lower town.

Q. And what business were they engaged in?

A. Mining and other business.

Q. What was the extent of territory covered by these supposed mineral lands and locations?

A. Confining myself to the Harshaw district, probably two or three miles.

Q. That territory would include a number of mines and locations?

A. A great many; yes, sir.

Q. What would be the principal mines?

A. Hermosa mines, Alta, Trench, Marshal, Marshal Extension, and innumerable others to a greater or less extent.

Q. What was the extent of the development of the camp?

A. This Alta company ran a 20-stamp mill, and started up, I think, in A'gust, '80, with a good many men, probably to the number of 130 or 140. It closed down again in '81, in July or August, '81, and remained idle for several years. I commenced working it again in '88, and I worked it along, more or less, for about 2 years.

Q. You are the owner of that mine?

A. That is, unless Mr. Cameron owns it.

Q. Are they inside of this grant?

A. I presume they are.

Q. On this map the heavy black lines show the Roskruge survey and the red lines show the Bonillas survey. Are these mines inside of these lines, of these surveys?

A. It has been surveyed so many times I have not looked at this map—yes, sir; as they are marked here.

Q. Do you know where United States mineral monument number 2 is?

A. Yes, sir; I do—marked U. S. M. in pencil, just south and east of Alta Mill site.

400 Q. Would that take this claim you spoke of inside of that black line?

A. I think so.

Q. Describe the topography of the place where this United States mineral monument number 2 is.

A. I can only describe it in a general way. It is a very rough, mountainous country.

Q. This monument number 2—how does it compare in altitude with the Penasco?

A. I would consider that it was from two to three hundred feet lower than the Penasco.

Q. On that map, which peak do you call the Penasco?

A. That spot designated as the Saddle Mountain I have always known as the Penasco.

Q. Now, what is the colorations of the soil, earth, on this hill on which mineral monument number 2 is located?

A. Yellow and red, rusty—you understand what that means.

Q. Does that discolor the whole hill?

A. In blotches, except where there is vegetation—where it is green.

Q. Will you state what patented claims there are in that camp?

A. To the best of my knowledge and belief, the Alta is patented, and the Trench claim is patented.

Q. Do you know the location of what is called the Mowry mine?

A. Yes, sir.

Q. When you first went down there, what evidence was there of working there?

A. I can not remember the exact date when I went down there. There were a number of old ones there which had caved in, more or less, that had been worked 12 or 15 years before. I knew they were not recent. I do not know when they were worked.

Q. What was their appearance?

A. I saw a stack still standing, a portion of the reduction
401 works, which I think was in '86. It was all in ruins. Apparently there had been furnaces.

Q. Did they appear when you first saw them as if they had been reducing ores in them recently?

A. Apparently there had not anything been done with them for several years.

Q. Is the Mowry mine patented?

A. I understand that the Mowry mine is patented as the Enterprise.

Q. Going from Harshaw to Mowry, what is the distance going, horseback or foot?

A. In a direct line I would not think it was over probably three miles.

Q. Do you know of any mine called the Jolota? About where is that located?

A. That is located west of Mowry, I should judge, about 2 and a half or 3 miles.

Q. Then going south from Mowry, how far is it to Washington Camp?

A. About 6 or 7 miles, I think.

Q. And when you first went down there what was there at that settlement?

A. There was considerable evidence of old work and new work, work being done, and a great many claims located.

Q. How about the people; how many were there?

A. I think probably they numbered a hundred.

Q. And what was their principal occupation?

A. Mining.

Q. Can you give the names of the mines?

A. Pride of the West, the Holland, Duquesne, and the Belmont mine, and the Empire.

Q. Were they patented claims?

A. At least I understood they were all patented claims; they had been worked considerable; the Silver Belt—at that time it was known as the Desloze.

Q. How about the Pool Group, claimed by Mr. Allen? Has that been patented?

(Objection that this is not the proper way to prove it.)

402 The COURT. It is not necessary to spend time on that; the confirmations always reserves the land that has been disposed of by the United States.

Q. Mr. Finley, I do not care for any lengthy answer, but in a general way I wish you would state what the character of that country is as to being valuable or not valuable from your experience.

A. To my knowledge, as acquired from the records, there has been something like eight hundred thousand dollars invested in there in Pima County.

Q. How long since you have been down to Washington Camp?

A. I was in Washington Camp—I met Mr. Pope over there—I think on the 13th of last month.

Q. How many people are living there, including the miners?

A. I suppose 200 or 250 people.

Q. About how long were you living at the town of Harshaw?

A. I went to Washington Camp on April 14, '80; I moved to Harshaw on the 6th of August, '81, and had my residence there and in Tucson ever since.

Q. Outside of your business of mining have you had other business?

A. The cattle business to a very limited extent.

Q. Has your cattle business, or whatever other business you have had, taken you to the head waters of the Santa Cruz River, known as the San Rafael Valley? Are you pretty familiar with the country there?

A. I was down there a great deal.

Q. As you go down in the valley there in the neighborhood of what is known as La Zanja and Cienega and turn to the left to the north and and northwest, about what is the character of the country that you would see?

A. It is rolling mesa country towards the north and northwest and southeast.

Q. And looking off towards the northwest do you see any peak

403 or peaks in the valley?

A. You can see the Penasco.

Q. On this map what do you call the Penasco as you look from the south, looking north and northwest?

A. It is a high, prominent peak.

Q. As you look from the south, how does it appear to you?

A. Sharp peak.

Q. What name was given to that particular peak when you first went in the valley?

A. As I said a while ago, it was known as the Penasco and is still known as the Penasco.

Q. Did you hear any other name for it until you saw this map of Mr. Roskruge, on which it is designated Saddle Mountain?

A. No, sir.

Q. Beyond the Penasco, until you reach the Canelo side of the valley, what is the character of the country?

A. I would call that a high plain—high mesa looking towards the west.

Q. What color would you call the top of that peak?

A. Red.

Q. Is the Penasco to the right or the left of the valley?

A. It would be to the right; near to the line of vision it would run a ways off to the right.

Q. At the time you went there and for some years after, did you go down in the country known as the Old San Rafael de la Zanja ruins? Did you find any monuments or piles of stones when you first went in there?

A. I can not remember exactly, but it seems to me that I was down there looking at some land in the valley of the Santa Cruz, on which there was some springs, to ascertain if it would be fit for certain purposes; I afterwards went down there with other parties looking for a site where I thought there would be more water than on that side directly opposite where Mr. Sheehy was then living.

Q. What water did you find?

A. We found water very close to the surface.

404 Q. Anybody there at that time?

A. Nobody except myself and the Mexican that I had doing the work.

Q. Was there any water running, or spring, between that place you spoke and the river.

A. Not to my knowledge.

Q. About where in the river was there permanent water?

A. There at Sheehy's place. Enriquez had some cattle and horses; he had considerable water.

Q. Were you at the point La Zanja?

A. I do not know anything about La Zanja; I was at that place where Slavens had his ranch.

Q. Where is that place which you described as Slavens' place?

A. I think it is north of the place marked Old San Rafael ruins.

Q. How far?

A. I think about a mile and a half.

Q. Do you know a place there where the post of the Allis survey is?

A. I knew where it was. On the 13th of last month we looked for it and it was not there.

Q. You know the place. Is there any water there, or cienega, at the present time?

A. I did not see any water.

Q. Was there when you first went there?

A. It was a very marshy place then.

Q. Now, did you know the place which is called the Old San Rafael ruins of a building?

A. At that time I did not know of any Old San Rafael; I knew the San Rafael ranch.

Q. Where was that?

A. Four or five miles from Slavens' place; I should judge some four or five miles; I never measured it.

Q. Was Slavens' place known as the Old San Rafael when you first went there?

A. It was known at the time as Slavens' ranch.

Q. Where was the place known to you, when you first went there, as the Old San Rafael?

A. I did not know then; I do not know now.

405 Q. Do you know the place known as the center monument?

A. I saw that monument on the 13th, I think, of last month.

Q. Did you see that monument when you first went in there?

A. No, sir.

Q. Was that place called San Rafael?

A. I never knew that place to be called San Rafael; I do not know any place called San Rafael.

Q. Did you know a place in there some three or four miles north of the center monument where there were adobe houses and corrals?

A. I do not know of any.

Q. Do you know a place up in here called Horse Corral?

A. There was no horse corral there, then; I do not know what is there now.

Q. Do you know where the windmill Mr. Cameron has up there?

A. I know a marsh that used to be there; at that place I used to go to hunt antelopes, a marshy place out east of the Penasco, marked Saddle Mountain on this map.

Q. Now, going north from the center monument, say 6 or 8 miles, did you find any place there where the water runs in the direction of the Penasco Peak?

A. There is one elevation after another going north, and all along that range and in the rainy season makes a big flow of water; in the dry season there is no water at all, no permanent water.

Q. What direction do these waters run that go towards the Penasco?

A. The general trend would be about west, but as they zigzag around they go in different directions.

Q. The Penasco, as you call it—look at this map—I will ask you whether or not this Saddle Mountain is what you have always understood to be the Penasco?

A. That is what I have always understood to be the Penasco.

406 Q. Now, then, looking on that ground there, what is the general course of the water that runs towards the Penasco from the Canelo Hills and around north?

A. The water flows to the west.

Q. Is there any water from near that windmill of Mr. Cameron that comes in from the south to the Penasco, as you call it?

A. There are numerous elevations in that neighborhood; just what the topography of the country is at the present I can not remember; I can not remember that time that I traveled over it except in an indistinct way—in a general way. I have been generally all over that country looking north from there, and in the Red Rock district.

Q. Where is the divide of the water that runs towards the Sonoita and the Santa Cruz?

A. This is the point up north on the edge of that mesa, about the edge of that mesa land and then north on this side of the Penasco and to the east; that is about the course; from the edge of the mesa, from the Canelo Hills the water flows just about as shown there, but as soon as they get out in the valley they all trend to the south.

Q. How about the Horse Corral?

A. I do not know anything about the Horse Corral.

Q. You do not know where it is?

A. No, sir.

Q. Have you been up 8 or 10 miles north of the Slavens place?
A. 7 or 8 years since; yes, sir.
Q. What is the character of the country as to forage, trees?
A. Up on the sidehills you find oak trees and juniper.
Q. How about the water trend up about that point?
A. The gullies all trend to the west and towards the Penasco; from the north they trend directly to the west.

Q. What do you know about any monuments out at Igo's Spring?
407 A. I do not know any monuments at Igo's Spring.
Q. Do you remember, going east from the spring, any road that runs to Huachuca?
A. Yes, sir.
Q. Did you see any monument in the road or near the road about a mile and a half north?
A. No, sir; no monument in the road or near the road; I mean a large monument of stones.
Q. Did you ever see a monument since that time, the monument that Mr. Cameron put there since then?
A. I saw the monument that was taken to be the same monument, that was put there, I should judge, about '84.
Q. Did you hear of any copper ridge or spur towards Huachuca, when you first went there?
A. No, sir; I do not think I did.
Q. Did you see any copper?
A. No, sir.
Q. Do you know of any Sierra del Cobre in there?
A. No, sir.
Q. Do you know the point where the Canelo Hills run down and join the Huachuca Mountains?
A. I do not know that except in going through Tanner's Pass; I do not know their termination except in a general way; it is simply a pass you can go through on horseback.

Cross-examination by Mr. HENEY:

Q. Where are the Sonoite Hills and the mountains you call the Sonoite?
A. These mountains that stand up in the valley where you go down from Crittenden straight; I mean they stand in the valley from Crittenden Station, or at any point up that valley.
Q. You don't mean the same mountains that are marked as the Patagonia?
A. I mean that as the northern end of the Patagonia; it would be about the same kind of a division as Tanner's Pass makes in the Huachucas, a box canon that practically cuts the range in two, and connected by a low pass running down between them.

408 Q. You say there are a large number of people at Washington Camp now?
A. On the 13th of last month I should judge there were 200 or 250 people in that neighborhood.
Q. When was the last time prior to that that you were there?
A. I think about a year ago.
Q. How many were there then?

A. That I could not answer; I think not as many as at present; I would think there was not much more than half.

Q. About '94, how many people were there in '94?

A. I doubt very much if I was in there in '94.

Q. Did you go there in '93 or '95?

A. No, I think not. I went to Harshaw in '88, and I do not think I have been there but three times since '88, to the best of my knowledge.

Q. When was the first time you went there after '88?

A. That I can not remember.

Q. How many people were there then?

A. I should think at that time there were in the neighborhood of 40 or 50 people. There was not very much doing at that time. They were doing some work on the Holland; they were digging their ore down below, I think, from the Holland.

Q. Most of the people at Washington Camp were working for the Duquesne Mining Company, most of the men were employed there?

A. Yes, sir; working for these two companies.

Q. For several years now the Pride of the West only had three or four men?

A. I think so.

Q. Were there any trees on the place marked Saddle Mountain and which you call the Penasco, which you give as the Penasco?

A. Yes, sir; there are trees on it. I can not say whether there are any on the top, but on the sidehills there are trees.

409 Q. Do you recognize that photograph of the place you call the penasco, or not?

A. Well, hardly; not from the point of view I ever saw it from the south, from down in the valley; I do not think that it presents that appearance; probably this upper portion there is all, about, that I recognize.

Q. Have you ever looked at it from the north?

A. From the north I do not think I observed it.

Q. You could not state as to that fact?

A. No; I could not; I may have observed its appearance from the north, but I never looked at it with a view of establishing any land grant, consequently did not observe it very closely in all its various aspects, as some other people did.

Q. Now, when was the first time you went to Igo's or Huachuca?

A. In March, '80.

Q. You were not hunting for land grants?

A. No; I had no knowledge of that land being in that grant until after.

Q. You were looking out for piles of stones?

A. O, yes; if a pile of stones attracted my attention.

Q. You do not pretend to say that every pile of stones attracted your attention?

A. I did not make any such statement.

Q. You were positive there was no pile of stones near that place for a mile and a half around east from Igo's in '80?

A. I stated that I saw no monument; I would judge there was some rocks in that neighborhood beyond that spring, that is beyond Igo's spring—that is, going towards Huachuca.

Q. Was there any pile of stones within ten or twelve feet of the road on the left-hand side of the road going towards Huachuca?

A. That I could not say.

410 Q. And you are still positive that was no pile of stones within that distance, say within 6 feet of the road on the left-hand side?

A. No; I am only positive there was no monument there in '80, '81, or '82. I have never been able to find out from the Mexicans or Indians what these piles of stone were for.

Q. Do they designate a branch or trail where you usually find them?

A. No; I can not say as to that; in fact, I think not.

Q. When was the first time you saw a pile of stones there?

A. I was coming back from Tombstone, with my daughter, in a wagon; I can only remember it was the time the Indians were pretty bad and we were driving home at night, and I remember distinctly that it was very cold weather and we stopped, and I know I slept very cold that night; we stopped with Mr. Rice, and Mr. Rice did not have any bedding; I remember that very distinctly; that was in '84; I am under the impression it was in '84.

Q. Do you know the month of the year it was in?

A. I can not remember now; I think April; I can find out exactly, because I took some silver to Tombstone, and I think the books of the Harshaw Mining Company will show the date of that sale.

Q. Where were these trees with reference to this pile of stones?

A. In coming this way the monument was on my right.

Q. How many trees were there?

A. I am not positive as to how many; there were several oak trees, I should judge 6 inches in diameter; I did not stop to examine them; I made the remark that that was extending the grant considerable; the letters S. R. G. were cut in the tree, marked red.

Q. Does that paint appear there yet?

A. In fact, it was, the last time I ever was there.

411 Q. Is that the pile of stones that has been taken for this monument?

A. I would simply say that my friends that were in the grant had moved the grant again, as I have accused them of doing many times, without any positive knowledge on my part.

Q. You have been in the habit of making them without any knowledge?

A. Yes, sir.

Q. You feel very deeply upon this from the fact that the grant is claimed to cover the mines you own?

A. Yes, sir; from a financial point I feel deeper; first, we had Senator Cameron, of Pennsylvania, to contend with, a Republican, and now we have a Democratic Senator from Alabama to fight us, and it does not make a Democrat feel any better.

Mr. MORGAN. I have been employed to come here to assist in the defense of the rights of a man with whom I served in the Confederate Army, and I am here for the purpose of defending any rights or claims he has got, and if the witness has any rights here the Government of the United States is amply able to protect him and will do so, and in reference to his personal remarks about me they are certainly improper, they are out of order, and they are unjust; I am here pursuing the rights of a private citizen, animated by an honest friendship for an honest man, my

friend, Senator Cameron, and I think that it is very rude, uncalled for, unjust, and ungenerous that I should be reproached here as a Democratic Senator from Alabama trying to bring my influence to bear upon this honorable court; if I should attempt to exercise my personal influence anywhere, this would be the last tribunal that I would ever appear before.

The COURT. We understand you are here simply as counsel,
412 Mr. Morgan, and have a right to be heard.

Q. You have been trying to settle this question of title to these mines by the arbitration of fire arms with Mr. Cameron, have you not?

A. I do not think Mr. Cameron will say so; any offer that I ever made still holds good, as far as I am concerned, but I never made any threats against Mr. Cameron's life in my life under any circumstances.

Q. Did you not tell Mr. Cameron at one time here between Zeckendorf's store and the Orndorf Hotel that if he sued you as he had sued Solon, you would kill him?

A. No, sir; I did not.

Q. Did you make any threats to him of that character?

A. No, sir; when I came to Tucson at that particular time I had just returned from California. A day or two after I got home my daughter said to me, "Papa, one of Mr. Cameron's men has taken the calf from one of our cows." I asked her, "Where did he go?" She told me. I got on my horse and saddle and followed him; I overtook him, and he said that he did not have my calf. I met Mr. Cameron here in Tucson, and I was particularly friendly to him, and I told him about his men taking my calf, and he said in a very loud and foul manner, "O, shit." "Don't you say 'shit' to me, or I will make you shit right here," I said to him.

The COURT. We do not think this subject should be pursued any farther.

Q. While you were a member of the board of supervisors of this county of Pima, did you not approve of the county map that was made by George J. Roskruge as county surveyor?

A. Yes, sir.

Q. You was chairman of the board at that time?

A. No, sir.

Q. It was your duty to call their attention to any inaccuracies on that map in order to correct any inaccuracies in it and call the attention of the other members to the fact?

413 A. I called their attention to the fact that Mr. Roskruge had made the mountains on this map to suit himself, but I said it won't affect any one in this country.

Q. You did not have any of the inaccuracies changed, did you, as to the names of these mountains—Saddle Mountain and the penasco?

A. No, sir; I did not inquire into the matter.

Q. Do you know what the word "penasco" means?

A. I have been told by Mexicans that it means a peak, or something of that kind.

Mr. POPE:

Q. You are one of the defendants in this case, are you; you were served as a defendant in this case?

A. Yes, sir.

JULIUS KUNDE, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. Where do you live?

A. I live at Lochiel—that is, I live in Red Rock now; my family is in Lochiel, but I am in Red Rock.

Q. Where is Lochiel with respect to this map introduced in evidence—the map made by George J. Roskruge, county surveyor?

A. I do not understand that map very well.

Q. However, the location is right on that map?

A. Yes, sir; about a mile west of the Santa Cruz River.

Q. It is on this grant now in controversy, as claimed?

A. Yes, sir.

Q. How long have you lived there?

A. Right there in Lochiel—I only lived there about since '93.

Q. Prior to that time did you live within the boundaries of this grant, as claimed here?

A. I lived with John Slavens.

Q. When did you go to John Slavens'?

A. I think in '79.

Q. Where was he living at that time?

A. At the spring La Zanja.

Q. Is that just above what has been testified to here as old Indian ruins?

A. Yes, sir; that is the same place.

Q. Since you went there in '79, and up to the present time, did
414 I understand that you have lived within this grant as now claimed?

A. Yes, sir.

Q. What was your occupation while you worked for Mr. Slavens?

A. At the ranch (Mr. Slavens had 6 or 7 hundred head of cattle) running around back and forth every day over the range and looking after the cattle.

Q. To what extent did you do that?

A. On the north as far as Crittenden, and to the east as far as Huachucas.

Q. Did you go north to Mr. Igo's?

A. Yes, sir.

Q. Rode the range all the time?

A. Yes, sir.

Q. Did you continue to ride the range over that country; and if so, to what extent—I mean over this grant as claimed?

A. I rode the range around Mr. Igo's.

Q. For how many years did you ride the range?

A. Since about '79.

Q. Up to what time?

A. To the present time.

Q. That is, you constantly rode the range from '79 up to the present time?

A. Yes, sir; cattle and horses both.

Q. Did you work for Mr. Cameron; and if so, when?

A. From '79 up to '93.

Q. When you first went there did you understand or know where the penasco is in that country?

A. Yes, sir.

Q. Was the penasco pointed out to you by the old people that lived there—Mexicans?

A. Yes, sir; Mexicans of Santa Cruz—the people of Santa Cruz.

Q. Where did you learn, when you first went there, that the penasco was?

A. It is up near the head of the valley—the Santa Cruz valley—about 6 or 7 miles from this place called La Zanja—that is, we call it about that.

Q. At what point can you first see this penasco that you speak of?

A. I can see it from La Zanja, I think.

415 Q. Have you ever been up on the mesa down at the mouth of the Canada del Potrero?

A. Yes, sir.

Q. Can you see this penasco from that section—from the Canada del Potrero?

A. Yes, sir; if you go out from the mesa up on the ridge you can see the penasco, but not right in the mesa.

Q. Can you see this penasco from the Santa Cruz Valley, from Lochiel?

A. I do not think you can see it.

Q. From the east side of the Santa Cruz River what is the appearance of the penasco, looking towards the northwest?

A. High hill; a mountain—that is, what you might call a bluff, abrupt bluff—on the south side.

Q. Looking at it from La Zanja or from lower down the Santa Cruz Valley on this mesa adjoining the river, has it the appearance of this abrupt bluff?

A. You can not see the bluff until you get up to it. As you go up it gets larger.

Q. This place marked "Saddle Mountain" right here, is that the same mountain?

A. That is what we call this penasco; always called that by the Mexicans.

Q. Is it given that name by the Santa Cruz people, the penasco?

A. Yes, sir.

Q. Now, look at these photographs, one of which I will show you.

A. I do not know if I know them photographs or not.

Q. You have heard the testimony?

A. Perhaps I have seen them photographs.

Q. You heard the testimony as to the photograph of the penasco as indicated on this map?

A. Yes, sir; there are three more penascos down in that country, besi*eds* there is some large ones on the same side, on the west side of that same range.

416 Q. Two more penascos besides that one?

A. They are small penascos, or big rocks stuck up; it is a range.

Q. Called by the Santa Cruz people the penasco—these other peaks?

A. No, sir; they never called them anything that I ever heard.

Q. Did the people prior to the time Mr. Cameron came in there call this Saddle Mountain the penasco?

A. Yes, sir.

Q. This other penasco that is marked on this map "The penasco," can you see that from the Santa Cruz Valley?

A. Not from La Zanja; no, sir.

Q. Can you see it from the Horse Corral, way up above here?

A. I do not know whether you can see it right where the Horse Corral stands, but you can out on one side. You can see it by going on the elevations.

Q. What as to being able to se' what they call the Saddle Mountain?

A. You can see that.

Q. How does that lie with respect to the divide between the Santa Cruz and the Sonoite?

A. This penasco marked "Saddle Mountain" is right on the divide where the watershed goes to the Sonoite and the other comes to the Santa Cruz River. The water goes both ways, and when it comes south it runs into the Santa Cruz River.

Q. Did I understand you to say that what they got marked "The penasco," what they now claim as the penasco, is or is not visible from the place marked La Zanja, from the point known as La Zanja?

A. I do not think it is. I do not remember of ever seeing it. I do not think it is visible from La Zanja.

Q. What cuts it off?

A. Ridges and arroyos; it stands lower.

Q. And this mountain, penasco, where is that with respect to this divide, the watershed of the Sonoite and the Santa Cruz River?

A. That is on the right hand where the water comes to the Sonoite and the Santa Cruz.

117 Q. How far is this penasco that they claim beyond this watershed between the Santa Cruz and the Sonoite?

A. From the Saddle Mountain it is between two and three miles.

Q. It is between two and three miles on the Sonoite side of this divide?

A. Yes, sir.

Q. Have you ever been out to where it is marked horse corral on this map?

A. Yes, sir.

Q. What side of the Cahelo hills is the horse corral?

A. On the west side.

Q. This horse corral is on the Santa Cruz River side?

A. Yes, sir.

Q. The Canelo Mountain range is on the east side of this horse corral?

A. Yes, sir.

Q. Describe these Canelo hills as to their size and the ability to get over them?

A. There is a horse trail on this wagon road going over; you can go over there with a wagon; then you go further south about three miles and go over the Muchachita Pass; that is a horse trail; you can go over there with a wagon; then you go over at Parkers Canon, called Potrero Wash; you can go around and get through them there.

Q. How are these Canelo hills outside of these passes as to being passable?

A. They are very rough except in these passes; you can go over these passes I have told you.

Q. How are the hills constituting this Canelo range as to being high? Are they high or not?

A. They are pretty high; they are not as high as the Huachucas.

Q. And what about this country from the horse corral out towards the west, towards what you call the Penasco?

418 A. Well, it is a kind of a rolling mesa; what you call an open country until you get clear up to the divide and until you strike the watershed of the Sonoite; there it commences very rough, all cut up with canons and washes.

Q. This penasco that you know as the Penasco is on this divide, is it?

A. This penasco that they call the Saddle Mountain stands right on the divide of the two watersheds.

Q. How is that divide as to being rough or high, this divide between the Santa Cruz valley and the Sonoite; any rough country in there?

A. Right south of that penasco the divide is not very rough; you can cross over to Harshaw.

Q. West of this penasco, is it rough in there?

A. It is cut with deep washes and canons.

Q. What as to being hills or mountains in there?

A. Yes, sir; for about a mile; it is the range that stands between the Red Rock Canon and the canon that comes from Harshaw; the Red Rock range stands in there, high rough range, and down there there are three penascos—that is, not together—over half a mile or a mile apart; these three is on the west side of that range, and down, after you get down from the end of that range there is a canon, big canon stands there with a big window through it; you can see clear through it; it must be 25 or 30 feet wide and a big hole right there is the penasco.

Q. What do you mean by penasco? These little ones that you spoke of?

A. They are straight rocks standing up in the range of the mountains, standing up in the end ways and round rocks, standing up endways.

Q. So there are several sharp rocks there?

A. Yes, sir; there are three on that west side of that range, three penascos, what we call penascos in Spanish.

Q. Have you ever heard any of these, outside of the one they call on that map Saddle Mountain, called El Penasco, or the Penasco, by

419 these old Santa Cruz people?

A. That is the only one that they ever called the Penasco that I knew or heard of, is that one.

Q. From the horse corral or in the vicinity of the horse corral, as laid down on that map, are there any arroyos running out towards what you call the Penasco?

A. The first arroyo that runs in that direction is about a mile, maybe a little less than a mile—that is, about that distance.

Q. Is there any arroyo running westward from the horse corral?

A. No, sir.

Q. You know where this arroyo or this wash is that Mr. Cameron has laid down here, do you, at the horse corral, in pencil, runs westward and turns down towards the Santa Cruz?

A. That arroy' that comes over the road you mean?

Q. Yes, sir.

A. That is the same arroyo that is between the Santa Cruz River, that comes to La Zanja ranch—it comes near there.

Q. Does it run west?

A. It only runs west about half a mile and then it runs south a little, then it turns and goes towards the Santa Cruz.

Q. Where it runs west does it run towards the penasco?

A. Yes, sir; towards the penasco for about two miles, a little above the Frazier mine to the west and then makes a turn at the horse corral and then turns off into the Santa Cruz River, the valley, but it is dry up there in the dry season—dry wash or gulch.

Q. Where is the Frazier mine, in the Canelo hills?

A. No; it is west of the Canelo hills.

Q. Where is it with respect to this divide between the Sonoite and the Santa Cruz?

A. It is right on that divide between the Sonoite and the Santa Cruz.

420 Q. And how far is it from the Penasco, or what they call the Saddle Mountain?

A. It is about three and a half miles.

Q. What direction?

A. The Penasco is due west from the Frazier mine.

Q. And the horse corral, what direction is that from the Penasco?

A. That is a little northeast.

Q. And this arroyo starts from the Frazier mine and runs towards the Penasco?

A. Yes, sir; that is, for about two miles.

Q. Where is that mine from the horse corral?

A. That is about two miles, I guess.

Q. What direction?

A. A little bit northeast from the horse corral, but on the Santa Cruz side of the divide.

Q. This water that comes from the Frazier mine goes in the Santa Cruz River and the water from the horse corral comes into the Santa Cruz River?

A. Yes, sir; it turns around; right there is where it makes its turn.

Q. What is the character of that country about where this arroyo runs towards the Penasco as to there being mesas or not—up around this arroyo as it runs west?

A. That is not a very rough country—that is, along the divide, it is open prairie country; you can drive over them with a wagon.

Q. What as to trees?

A. Some oak trees around there.

Q. Do you know when Mr. Richardson came into that country?

A. Yes, sir.

Q. About when did he come in there; were you out there before he was?

A. Yes, sir; sometime before Mr. Richardson; he bought the cattle and ranch first of the German and then afterwards bought Mr. Slavens out.

Q. Do you remember Mr. Green?

A. I only know of him.

421 Q. Was he out in there before you?

A. I do not know.

Q. You saw him there after you came?

A. Yes, sir; I seen him a little after—maybe 6, or 8, or 10 months.

Q. I believe you said that you knew where La Zanja is?

A. Yes, sir; that is where I lived.

Q. At Slavens' place?

A. Yes, sir.

Q. Did you ever hear of the Old San Rafael ruins—what is called by some people as the San Rafael ruins?

A. Yes, sir.

Q. Where is that location?

A. That is down below La Zanja, about—well, in the neighborhood of three miles.

Q. And how far from the international boundary line?

A. A little over a mile, I think.

Q. What was that known as when you went in there first?

A. Known as San Rafael by the people.

Q. What people?

A. By the Santa Cruz people—Mexican people.

Q. How far is Santa Cruz from the boundary?

A. About 7 miles from the line.

Q. Did you ever hear in there any other place called San Rafael in that valley at the time you went there in the early days?

A. Two places they called San Rafael in the valley; there is one called San Rafael de la Zanja, and the other is called Old San Rafael.

Q. Where is San Rafael de la Zanja?

A. That is what we call La Zanja.

Q. And where is Old San Rafael?

A. It is about three miles below, about a mile north of the line.

Q. Do you know the place where the center monument of this grant is now claimed to be, about a mile south of La Zanja?

A. I know what is claimed to be by Mr. Cameron.

422 Q. Were you ever there with Mr. Cameron?

A. Yes, sir.

Q. Was it pointed out to you by Mr. Cameron?

A. Yes, sir.

Q. How far is that from La Zanja?

A. About a mile; maybe not quite so far—about that distance.

Q. What side of the river is that?

A. On the east side of the river.

Q. Have you ever been on the mesa there?

A. Yes, sir.

Q. What is the character of that mesa—the top of it?

A. It is a mesa with rocks over it.

Q. Did you see any signs of old ruins there when you first went there—old adobe corrals?

A. When I first went there it looked just the same as it does now; there had been a kind of a town there.

Q. How does it look now as to there being any adobes visible?

A. It is all melting down.

Q. Can you, as a matter of fact, tell when these structures were made, from the evidence now there?

A. No.

Q. What is it covered with—these houses?

A. Nothing but dirt, scattered rocks; it is grown over with grass.

Q. When you first went there were there visible above the surface—the ground—any evidences of what these buildings were made of?

A. No, sir; they looked just the same as they do now when I first saw them.

Q. Anything there to indicate who used to live there?

A. No, sir; no one ever knew who lived there; never can tell.

Q. Were they all called ancient towns?

A. Several ancient towns were built the same way, with these big streets run through for a race track, about a mile up along on the west side of the river on a mesa—just the same kind of a town, with a race track through the middle of it, as we call a race track there, a
423 street running through, it is scooped out hollow, lower than the main mesa.

Q. Did you ever make any inquiries of the Santa Cruz people as to who lived at these places?

A. That is what they say; I asked them a hundred times or more.

Q. Did you ever hear anyone say down there that the people of Santa Cruz used to live there?

A. They did not know who lived there; that is what they told me; I have made inquiries all the same way; I do not know anything about them either.

Q. Did you ever find any Indian pottery down there?

A. I found metatas, pieces of metatas; by getting up on the high places you can find lots of them, little stripes on them.

Q. Were you down there at this spot that you speak of with myself and Mr. Tipton any time within the last month?

A. Yes, sir.

Q. When I picked up some striped pottery that day?

A. Yes, sir.

Q. Did you at that time point out to me a pile of stones on the edge of this mesa?

A. Yes, sir.

Q. When you first went there to live with Mr. Slavens about a mile from this place, did you have occasion to go down frequently to this old Indian town?

A. Yes, sir; that is, when I was on the ranch I rode over the range; I went to that same place every day—I mean over the country over the range.

Q. Now at that time was there any monument of stones on this place?

A. When I first came to that country there was these scattered stones around them ruins, around in this Indian town, as we call it, plenty of scattered stones lying around all over the mesa.

Q. Was there any monument piled up?

A. I did not notice any at that time; I did not see any; I did not see any monument there then.

424 Q. When did you first see it?

A. I do not remember if it was in '83 or '84 when I first noticed that monument.

Q. I wish you would describe it, the way it was then.

A. It was a good deal smaller monument then than it is now when I first saw it; it is larger now than it was then.

Q. Was it built up any?

A. It was a pile of stones piled round of a monument built of loose rock about that high—that is, now it is about that high [indicating]; it was not that high then.

Q. While you were working for Mr. Cameron was any survey made of this grant?

A. There was surveyors there two or three different times.

Q. When you first saw this monument had there been any survey made at that time?

A. I do not remember whether I saw it at that time or just before that.

Q. With respect to time, was it about that time or when?

A. I could not remember if it was a little while before or after that; I can not say; it was in '83 or '84, around there.

Q. Was that survey made by Mr. McLaughlin?

A. I think that Mr. McLaughlin made that survey.

Q. And you saw it about that time?

A. I would not be sure about that; I did not pay any attention to it.

Q. When did Mr. Cameron come there?

A. I think he came there in '79; I think it was.

Q. He came there after Mr. Richardson?

A. Yes, sir; I think he came in there, if I am not mistaken, in the winter of '82, along in December, some time along there of '82; I think he came down there in the winter of '82 and never come back until '83 and received the ranch and I commenced to work for him.

425 Q. Did you ever see this stone monument prior to the time Mr. Cameron came there?

A. No, sir; I do not think I did; not at that place; no.

Q. Did you ever go out to Mr. Igo's place?

A. Yes, sir; I have often been around Mr. Igo's place; I have often been out in that country.

Q. When was the first time you were there?

A. I was around there, I think, in '80.

Q. How did you happen to be out in that country?

A. Go around there from Huachuca, Charleston, and Tombstone.

Q. Ever go out there with cattle at that time?

A. Yes, sir; we never drove the cattle around there; always drove over the Canelos, but then after we got over the Canelos we go to Huachuca; the loose rocks, stones, cuts them, their feet—we generally go over the Canelos and then come back as far as Campini's at that time; now we go over the Canelos and go down to Huachuca in the road, in pencil there on that map; we go over the Canelos going to Tombstone or going to Huachuca.

Q. To what extent were you out in that country in '80 and for the next two or three years?

A. Lots of times; I could not tell how many; great many times.
Q. Are you familiar with that section of country?
A. Yes, sir; I have come there a good many times.
Q. Have you ever been out there with Mr. Cameron since he came out there?
A. Yes, sir.
Q. Have you ever seen the northeast monument of this grant as he claims it out there?
A. Yes, sir; there is a big monument beyond Igo's called the San Rafael monument.
Q. Mr. Cameron pointed it out to you as you went along there?
A. Before he pointed it out he told me what it was.
426 Q. And you saw it at the place where he told you?
A. Yes, sir.
Q. Is it a large monument?
A. Yes, sir.
Q. Where does it stand with respect to the road?
A. The road runs on each side of it; it stands in the middle of the road.
Q. When you first went there in '80 was that monument there?
A. The first time I went I did not notice anything but two or three rocks lying there together.
Q. How many?
A. Two or three; I forget which.
Q. Piled on top of each other?
A. There were three of them laid together.
Q. Did you find out, did you hear at that time, whose monument it was?
A. No, sir; I do not know whose monument it was.
Q. What did you hear?
A. I heard the location of the ledge; that is what I heard.
Q. Mineral location?
A. Yes, sir.
Q. Those three rocks, just indicate to the court how they were.
A. They were laid three pushed together.
Q. How large were they?
A. About the size of a man's head or a little larger.
Q. Do you remember the name of the miner who had this location?
A. No, sir; I do not know his name; I do not know that I ever heard his name.
Q. You never prospected any?
A. Not much; no, sir.
Q. Outside of those three stones was there anything there to indicate a monument?
A. That is all I seen—them three rocks.
Q. Was there any old stones scattered on the ground outside of the natural way?
A. Just like stones scattered over the country now.
Q. For what distance around are there stones scattered all over
427 the ground anywhere around?
A. Where that ledge comes there is plenty of stones at that ledge.

Q. For what distance?

A. Several hundred yards; you find stones lying around anywhere.

Q. When was the first time you saw this monument built up as it is now?

A. I think it was in '84 the first time it was built up the way it is now.

Q. Was that about the time that Mr. McLaughlin made his survey?

A. Yes, sir; about that time.

Q. How was it built up then?

A. It was a large monument, built up in that shape.

Q. How many stones do you suppose there was in it at that time after you saw it built up after Mr. McLaughlin had been there?

A. There are a good many stones; I do not know how many stones in it.

Q. Now, were you ever out to the place Mr. Roskruge has got as the northwest monument out there towards what they call the penasco—out beyond the Cottonwood spring or Cottonwood ranch?

A. Well, I was down there one day with Brewster where that monu- is located—Brewster Cameron.

Q. Did you build up a monument then?

A. Yes, sir; there was one built there; we made it a little larger, and built another on top of the bank—on top of that bank; it is a mesa—kind of a mesa.

Q. What year was that about?

A. I do not remember; I think it was in '84, along there; I would not be positive about that, but along about that time; I did not pay much attention; it was when Brewster Cameron located a mine in the San Cayateno Mountains; you could not see it from that
428 point; he had some kind of Spanish paper there and reading it and I understood to see if I could see it—the San Cayateno Mountain—from that point, and we could not see it from away off in the distance; we came on up to a little round hill where there is a cut in the road that comes here from Harshaw on the west side; the road runs along the red hill, and there I got on top and could see the San Cayateno Mountain from that end; that is some north of the San Cayateno; he comes up then; he was looking for that point; that was what he was hunting down—that is as he dessribed it.

Q. This place did you add to the monument?

A. Not that one.

Q. Had you ever been up to that country before?

A. Yes, sir; that was a new monument at San Cayateno.

Q. The one that you added to, was that a new monument?

A. Yes, sir; that lies between two little hills; that is down a little towards Crittenden—down two or three miles from Crittenden station.

Q. Is that north of Crittenden ranch?

A. Yes, sir; a little bit west of north; that is Cottonwood ranch, what we used to call old Capp's place.

Q. That is where Mr. Leak used to live?

A. Yes, sir.

Q. Do you know where that oak tree is at the north center monument?

A. Yes, sir.

Q. And a monument built around an oak?

A. No, sir; that tree, we never went to that place; that is where the oak is; I never seen that.

Q. Where that black spot is marked tree and north center monument?

A. I never seen that; never, in fact, never looked for any monuments when I was riding; a person can not know.

Q. This monument that you spoke of, is that around a tree?

A. That is separate; there is no tree near that monument;
429 standing on a little open ridge there is bushes around; it is near juniper bushes—kind of a cedar, in other words; there is the mesa that leads from the Babocomari and going down to the Sonoita.

Q. Now, in going over this country as you have for the last 20 years, to what extent have you seen monuments or piles of stones such as these; to what extent have you seen piles of stones in riding over this country, around this section of country?

A. Lots of monuments all over the country; you find monuments there almost anywhere near by around mining locations—piles of stones on the mesas or hills.

Q. You can find them on mesas—piles of stones that look like monuments?

A. Yes, sir.

Q. And how do these monuments appear with size and appearance from these monuments that are around this grant?

A. The same kind of monuments; they are made of the same kind of stones; them monuments that is claimed by the San Rafael grant are like monuments scattered around other places; about the same kind of stones.

Q. The same kind of rocks, piled the same way?

A. Well, I do not know that they are built up the same, exactly the same way; some of them are falling down and some of them a little bit higher.

Q. Now, you know where the southeast corner of this grant is, as Mr. Cameron now claims it is?

A. That is in Sonora; yes, sir; it is down in Sonora, the southeast corner, to the La Bota—La Bota ranch.

Q. When were you first out in that country?

A. I have been out over that country frequently; the cattle used to run over that country much; we drove them two or three days, or perhaps sometimes for a week.

Q. Have you ever seen that monument that he is now claiming as his southeast corner, out in that direction?

430 A. I know where there are some monuments out there; I do not know whether he claims them or not.

Q. Have you ever been out there with him?

A. One time.

Q. Did he point out to you his southeast corner?

A. I do not think he did.

Q. Had he located that corner there at that time?

A. He was out there with Mr. Wolfley, the man that used to be governor.

Q. What was he out there about?

A. He had it surveyed, surveying around.

Q. Who was there besides Mr. Wolfley?

A. I do not remember; Mr. Cameron was along with him.

Q. Did you ever see that corner after he described where it was to you?

A. Yes, sir; three or four piles of stones over there; I do not know which piles of stones he claimed.

Q. When did you first see these piles of stones there?

A. I think in '84; '83 or '84.

Q. You do not know which one of these piles of stones he claims as his southeast corner?

A. No, sir; I do not know which one he claims; there are two or three piles of stones, and I do not know which one of them three he claims, but they are right in that neighborhood.

Q. Now, when you went in there in '79, what was the condition of the country as to water; was there more water or less water than there is there now?

A. There was a heap more water then than there is now; there was a cienega down there below; what they call a cienega is in below.

Q. What do you ascribe the less water to?

A. Heavy rains have cut out the river deeper than it was at that time.

Q. What as to there being springs then down there in the lower part of this grant?

A. There was more seepage then than there is now; they are dried up; that is on the east side of the valley; there is one spring
431 there, a mesquite spring.

Q. Was it permanent water?

A. It stayed the whole year round.

Q. What other springs were there on the east side of the valley at that time besides this mesquite spring?

A. At Sheehy's spring there is a good deal of water now; Callahan spring, water there now; another further down; southwest from there there is another spring, just over the ridge less than a mile; Turtle spring down there.

Q. Is that near Viviana spring?

A. It is the same place, the same spring where there is a pipe. Callahan spring is a good spring.

Q. Was it permanent water?

A. Yes, sir; it is a good spring to-day.

Q. What as to the water sources at the place La Zanja?

A. Yes; a good spring there.

Q. Permanent water all the year round?

A. Yes, sir.

Q. Did you know a spring at that time called the spring?

A. Yes, but that is way down below; that is down below, to the west side of the Old San Rafael ranch.

Q. How *aad* that as to being permanent water there at the time you first went there?

A. Permanent water there; it runs in the pasture where we used to keep saddle horses there; I lived in there three or four years.

Q. When you first went there there was water right along?

A. Permanent water.

Q. Now where is that with respect to the Old San Rafael that you have spoken of, about a mile west of the line?

A. It is right due west from there.

Q. About west?

A. Yes; it is a little bit more west from this Old San Rafael ruins than it is——

432 Q. On the west side of the Santa Cruz Valley?

A. Yes, sir.

Q. How far from the river?

A. About half a mile; little more, perhaps; it is a little over half a mile; pretty near three-quarters of a mile; it is fenced in now.

Q. What Mr. Cameron calls his home pasture?

A. Yes, sir; we used to use it for saddle-horse pasture.

Q. Did you ever hear when you first came in there where the Sierra del Cobre Mountains were?

A. No, sir; I do not know anything about the Sierra del Cobre.

Q. Did you ever hear the north end of the Huachucas called the Sierra del Cobre?

A. No, sir; I never heard that name from the old timers; I never heard that name.

Q. Did you ever make any inquiries as to the name of that mountain to the left of Tanner's pass?

A. That is the Huachucas.

Q. Did you ever make any inquiries of the old people of Santa Cruz as to the name of that mountain, of the Huachucas—that range of mountains?

A. That is all they say, Huachucas, is the right name that they called it.

Q. That is all they told you?

A. Yes, sir; I never heard any other than the Huachucas; I heard other names since I have been in here in this court; I do not remember of ever hearing that before this time.

Q. Is that what they called it when you first went in there?

A. Yes, sir.

Q. Did you ever hear of any copper being found on those mountains, near Mr. Igo's?

A. No, sir; never did.

Q. Did you ever hear of copper being found in the Huachucas at all?

A. Well, I have been told there has been copper found in them, there in the south end where Tanner's pass goes through.

433 Q. Where does Tanner's Pass go through with respect to the end of the Canelo Hills?

A. It goes to the south end of the Canelo Hills; it goes through the Huachucas to the south of the Canelo Hills or Range.

Q. How far is that from Igo's place?

A. I think it ten or twelve miles, but to go round the road it is further.

Q. Is there any other pass going through the Huachucas north of that pass right at the foot of the Huachucas from Tanner's Pass?

A. No, sir.

Q. Any other pass between this and Mr. Igo's place?

A. Not going east; no, sir; there is one way that you can go and come down to the foot here.

Q. Can you see that pass from the place La Zanja, near Mr. Igo's?

A. No, sir; the Canelo Range cuts that pass entirely off; you can see Tanner's Pass from La Zanja; that is on the south of the Canelo Range.

Q. Have you ever been through Tanner's Pass?

A. Yes, sir; many times.

Q. Where was this copper found in the Huachucas—was it in Tanner's Pass, that is on the west side of the main range of the Huachucas?

A. At the end near two springs.

Q. Did you ever hear of copper being found there in olden time?

A. Yes, sir; in Mexican times; I have heard Mexicans tell about copper being there.

Q. Where did those Mexicans live?

A. They lived down in Sonora.

Q. Did they say when copper had been found there with respect to recent or olden times or when?

A. I did not ask them.

Q. You spoke of two springs where this copper was found.

A. Yes, sir.

(Motion made to strike out this testimony in regard to the copper as being hearsay.

Sustained; it is mere hearsay; the end of this case might be
434 reached some time if we would confine ourselves to the legitimate line of testimony in the cross-examination of witnesses.)

Q. What kind of springs are they at Tanner's Pass?

A. They are good springs on the mountain side, on the end of the Huachucas, pretty high up. The two springs form a kind of a cienega there, on the west side of the Huachuca Mountains.

Q. What is the formation of the mountains at that place where the springs are?

A. It is mostly limestone rock. Right in the northern direction from them springs is a high mountain; it runs up; there is a big rock near the top of it; big rock standing there.

Q. Where are these springs with respect to the Canelo Hills?

A. To the south end of the Canelos; I should think about three miles.

Q. In what direction from the springs?

A. A little bit north of west.

Q. The end of the Canelo Hills would be a little bit north from these springs?

A. Yes, sir.

Q. And how far would they be from La Zanja and in what direction?

A. It would be about twenty miles; it would not be quite that far.

Q. What direction from La Zanja?

A. Southeast.

Q. How far is Mr. Igo's spring from La Zanja?

A. It must be 15 or 16 miles; something like that.

Q. Do you know where the Carricillo Springs are?

A. Yes, sir.

Q. Were there any Carricillos small canes at Mr. Igo's when you first knew it?

A. None that I ever seen.

Q. I believe you said you were there frequently when you first went to that country?

A. Yes, sir.

435 Cross-examination by Mr. HENEY:

Q. Cattle are very fond of that cane?

A. Yes, sir.

Q. All cattle will eat it and so will horses and burros?

A. Yes, sir.

Q. In what direction does the water run at Igo's spring?

A. Towards the north; not due north; it runs a little bit west.

Q. Looking at the Huachuca Mountains from the direction of the San Rafael ranch, the point of the mountains seems to be just north of Huachuca?

A. Yes, sir; that is where you go round the end of them at Igo's; that is considered the northwest end of the Huachucas.

Q. In driving cattle from the San Rafael ranch to Babocomari and Tombstone, what is the easiest and best way of going from there?

A. You go through the Canelo Pass; you can go down by the cienega and Mr. Rice's and cross the ridge there.

Q. You leave Mr. Igo's spring then to the east as you travel on in taking cattle from the San Rafael ranch?

A. Yes, sir.

Q. Did you ever take cattle to Charleston and then to Tombstone?

A. I would not be sure; I know I went to Tombstone.

Q. In December, '83, did you drive a bunch of cattle over there?

A. I went from Tombstone about that time.

Q. Did you feed at Igo's?

A. I think we fed at Igo's.

Q. How far is Wright wash from Igo's spring?

A. It is about a mile or a mile and a half or more to the east of it.

Q. If you wanted water where could you get it except at Igo's?

A. You could get water at Rice's.

Q. And how far before coming to that point—before you come to Igo's?

A. 5 or 6 or 7 miles.

Q. Igo's is the first water after you leave Rice's?

A. No, sir; Connell's is.

436 Q. How far is that from Connell's?

A. About 5 or 6 miles.

Q. Igo's is the first water after leaving Connell's?

A. Yes, sir.

Q. What was the next water you come to when you first went in there in '79; which direction did you go into this San Rafael Valley?

A. Through Tanner's Pass.

Q. Did you come by Igo's then?

A. No, sir.

Q. How long after that was it that you went to Igo's spring?

A. Two or three weeks, maybe.

Q. Did you find a road running out there then?

A. Yes, sir; wagon road and trail; you can drive a wagon over it.

Q. You heard the people of Santa Cruz say that there was an old road and trail in the Canelo Hills?

A. That is the main trail that leads from the Santa Cruz Valley and around to Mr. Igo's, over in that country.

Q. The Indians and Apaches used to follow them out on that trail?

A. Yes, sir.

Q. In going from the San Rafael ranch to Crittenden in '79 when you first went out there, was there any trail that was used for wagons out there?

A. From Mowry the same road went to Crittenden, and that same road from Santa Cruz that run from Lochiel or La Noria.

Q. You say there was a road there in '79?

A. Yes, sir; this valley road.

Q. Was there a road from the Red Rock country?

A. Yes, sir; there is a road there.

Q. There was a road there in '79?

A. Yes, sir.

Q. This road here from Tucson to Crittenden?

A. Yes, sir; going out west of this Red Rock country.

Q. That would bring you right into the foot in the north of it?

A. It would bring you right in the northern foot of it.

437 Q. In going along there you can look over to your right when you get opposite this penasco; that is what you now call the penasco?

A. Yes, sir; through this mountain here.

Q. Can you show me on this map here about how that road ran in '79 out to Crittenden?

A. The same road is there to-day.

Q. Can you point out on the map about how it ran from here?

A. Yes, sir; it ran to the right of the Saddle Mountain. It runs west of the Saddle Mountain—between the Saddle Mountain and Harshaw.

Q. You can see the penasco from the road when you are opposite it?

A. Yes, sir.

Q. When you came to San Rafael you heard the old people of Santa Cruz say that that is the old trail from Tucson?

A. Yes, sir.

Q. Now, in going up the valley from the San Rafael ranch when you get to Slavens place you go just north to La Zanja you get on the mesa, do you?

A. Yes, sir.

Q. You can see this place called the penasco?

A. I may; I never noticed that penasco. You can see the penasco that you call the Saddle Mountain.

Q. What does that penasco look like?

A. It is a rock, stands up, sharp point.

Q. I show you plaintiffs' Exhibit F 29. Have you seen that photograph?

A. I won't say; I can not see well without glasses.

Q. I show you plaintiffs' Exhibit F 28. Would you call that a penasco?

A. It just depends how it is located there. If I look at it on the other side it would be abrupt. I would call it a penasco. It just depends how you look at it.

Q. If this was standing up would you call that a penasco?

A. Yes, sir.

438 Q. I show you plaintiffs' Exhibit F 70. Do you see anything in that photograph that looks like a penasco?

A. I do not see how you could call it anything else.

Q. I show you plaintiffs' Exhibit F 71. Do you see anything in that that looks like a penasco?

A. I am not well acquainted with photographs to testify to the photograph.

Q. Do you see anything in that that looks like a penasco?

A. I won't answer. You come up and ask me about that and I will explain if you come up. I could not testify to them photographs. I can not testify to them photographs without you tell me there. I won't say anything about them photographs. You describe the country and I will answer you.

Q. What is an arroyo?

A. A creek.

Q. Where the water has washed out the surface of the ground?

A. No, sir; where the water has washed out the surface of the ground it would be called la zanja; it would be a narrow place. You do not have to have banks all the time.

Q. In an arroyo, at least where there are not banks, it would be sandy and not grown over with grass?

A. Yes, sir.

Q. Now, up here by the horse corral, where the valley starts to run towards the mountains from the horse corral, does the valley start to run towards the west?

A. It don't run west from the horse corral.

Q. Where does it run?

A. East of the horse corral; it turns south from the horse corral from the Canelo Hills.

Q. From the mountains that would be an arroyo?

A. That is a wash or arroyo; yes, sir; an arroyo; wash or drain.

Q. As a matter of fact, the grass grows all the way across the country?

A. No grass in the creek. There is sand and rocks in the bottom of the creek for quite a distance.

439 Q. Does it run from the sides of the mesa both ways?

A. Yes, sir; the water runs off to the Sonoite and the Santa Cruz.

Q. It runs right from the mesa, then, does it?

A. Yes, sir; the arroyo lies on the top of the mesa; the water runs off to both sides of the mesa.

Q. And how far can you go off to either side of the arroy' in opposite directions and still be on the mesa?

A. Two or three hundred yards on each side of the mesa, and then the mesa drops right off into the valley.

Q. That arroyo, then, is not on the edge of the mesa?

A. The mesa is on each side of the arroyo.

Q. You said it was on the edge of the mesa.

A. It is on the edge of the mesa.

Q. On the edge of the mesa on the Sonoite side and on the edge of the mesa on the Santa Cruz side?

A. Yes, sir.

Q. On both sides?

A. Yes, sir.

Q. This San Sito spring you spoke of, where is that with reference to La Noria?

A. I think it is about a mile and a half.

Q. And in what direction?

A. It is in a northeast direction.

Q. Is there any spring there now?

A. I have not been in there for three or four years; I do not know; we kept saddle horses in there.

Q. Is it in the bottom of the creek?

A. It is almost in the valley.

Q. From the time it rains does the spring run all the time?

A. It did while I was there; we had plenty of water for the saddle horses.

Q. This canon that runs from the mesa lands up here where we claim to have a north center monument, that canon runs over there towards the Red Mountain?

A. Yes, sir.

440 Q. And the Sonoite Valley lies over just beyond this Red Hill that you see?

A. Yes, sir.

Q. And the Sonoite Valley lies north of that Red Hill?

A. It is over beyond it.

Q. All this water up here comes into the Sonoite from a thousand forks, all these different forks, and it runs west and northwest into the Sonoite Valley?

A. Yes, sir.

Q. All this country up next to this Red Hill runs off a little bit west of north?

A. Yes, sir.

Q. Now, standing up on that mesa and looking down from the Babocomari Canon, can you see this penasco?

A. I do not remember; you can see the Red Mountain; your penasco is on the west side; I mean your penasco is to the west if you stand here and look west; then I do not know if you can see it or not.

Q. There is an arroyo running along the edge of that mesa that runs towards the west?

A. Yes, sir; it comes towards the southwest, right there a short distance after you turn around a little ways, then the arroyo turns a little bit to the north.

Q. Does it turn to the southwest right at the mountain?

A. Yes, sir; but after you follow it it begins to work round a little two or three hundred yards.

Q. You could not see the Saddle Mountain on that mesa by the north center monument, could you?

A. I believe you could from the top of that valley; I never sighted over that.

Q. Please don't answer any other question that I do not ask you; when you went there, in '79 to *to* '83, you had no particular reason to notice monuments, did you?

A. A man naturally notices these things.

441 Q. Suppose there had been a pile of stones near that Indian village, as you please to call it, when you first rode over there, would that have attracted your attention?

A. I would have noticed it. I used to hunt around and spend hours with them old Indian rocks.

Q. Then it would have impressed itself on your memory you think?

A. Perhaps I can explain to you.

Q. You think you can remember any place?

A. When you see one pile at a time you can remember.

Q. You said Mr. Read read a Spanish paper to you.

A. That was down below.

Q. He read a Spanish paper to you?

A. Yes, sir. Very little, I think.

Q. As a matter of fact he don't talk Spanish at all, nor read it either.

A. I guess he could read it.

Q. What makes you think so?

A. I think I have heard him read Spanish several times, but might not have understood the meaning of the words.

Q. Did he tell you the paper said there was a monument there?

A. That the paper claimed there was a monument there.

Q. Did he tell you that?

A. I think that the paper said there was a monument there.

Q. Did he tell you that the paper from which he was reading said that there should be a monument there?

A. Yes, sir.

Q. Where are you living now?

A. My family is in Lochiel; I got my ranch in the red rock country.

Q. Where did you have your ranch recently; where were your cattle running recently?

A. Recently, Lochiel, San Rafael Valley; right on this lower part of the San Rafael ranch, just inside; some were running all around the valley; they run up as high as La Zanja.

442 Q. Since last year were your cattle in the valley, and now you have them over in the red rock country?

A. Yes, sir.

Q. Whereabouts on this red rock country; on any grant?

A. The grant did not cut any figure with me.

Q. In the red rock country—how far from Cottonwood Spring?

A. About two miles and a half or three miles.

Q. What direction?

A. In the north.

Q. Here is Cottonwood ranch right here?

A. Yes, sir.

Q. Don't your cattle range to the Harshaw Creek?

A. Yes, sir; the cattle range up on this San Rafael ranch, if it runs where you claim it does.

Q. Where did you come from to this country when you first came in?

A. I came from San Carlos; from San Carlos I came from El Paso; if you want to argue that case——

(Objection to this as being immaterial.)

Q. Mr. Cameron discharged you in '93, did he not?

A. Discharge me? I do not know as he did; you can call it discharge; yes, sir.

Q. He discharged you because you branded some of his colts?

A. No, sir.

Q. You owe him thirty-five hundred dollars on your notes?

A. I think he owes me.

Q. Don't he hold your notes for that amount?

A. If you want to argue that whole case over, all right.

Redirect examination by Mr. POPE:

Q. Does this penasco, which you say is the Penasco, look like a penasco from the south?

A. Yes, sir; it looks like and is always called by them people down there the Penasco.

Q. Do you know any peak in that country at all that is called a picacho down there?

A. No, sir.

443 Q. Is this penasco you speak of a picacho?

A. No, sir; they call that the Penasco all the time, by all the old people; you can see it from below there, and below the lower country it is called the Penasco.

Q. Which is higher in elevation, this monument that is near Mr. Igo's spring or the spring itself?

A. The spring is higher up than the monument is.

Q. Do you remember this Cienega pasture about which Mr. Cameron had a lawsuit?

A. Yes, sir.

Q. What direction is that from the Canelo Hills?

A. That would be north of the Canelo range; it would slope to the Canelo range.

Q. How far is that from the Canelo Pass?

A. That would be about five or six miles from the Canelo Pass; it would be northeast.

Q. How far is it from the Canelo Pass to Mr. Igo's?

A. About ten or 12 miles.

Q. And from the Canelo Pass to La Zanja?

A. It would be about 6 or 7 miles.

J. W. LEAK, sworn upon the part of the Government, testified, upon direct examination by Mr. POPE, as follows:

Q. Where do you live?

A. Harshaw, when I am at home.

Q. Do you know the country known and described as the San Rafael de la Zanja grant?

A. I know a good deal of it.

Q. Do you know where Lochiel is on that section of country?
A. Yes, sir.
Q. When were you out in that country?
A. In 1880.
Q. Where did you live when you first went there?
A. In Harshaw.
Q. Did you live at any other point subsequent to that time—since that time?
A. Yes, sir; I lived 5 miles this side of Harshaw.
Q. At what place?
A. On a place Mr. Cameron has at Cottonwood ranch.
444 Q. How long did you live there?
A. I lived there three years.
Q. How did you happen to live there?
A. When I left the Cottonwood ranch I took up another ranch below there until my wife died, and I went back to Harshaw.
Q. Do you remember when Mr. Roskruge was out in that country making a survey?
A. I think he was there in '80, with Mr. Richardson.
Q. Do you remember any time he was in there afterwards?
A. Some time in '84, I think, he was there again.
Q. Do you know where his northwest corner of this grant is northwest from Cottonwood Spring?
A. Yes, sir.
Q. Claimed as the northwest corner of this grant?
A. Yes, sir.
Q. To what extent were you in that country prior to '84; were you there in '84?
A. Yes, sir.
Q. Do you know who built that monument—that monument that was built at that time?
A. It was not built at that time; I do not think they run that line clear across in Cottonwood ranch at that time.
Q. When did you first see that monument?
A. In the fall of '86.
Q. How did you come to see it; who told you about it?
A. I think Mr. Cameron had got in a little squabble about it and thought it was Government land.
Q. Was he trying to buy you out?
A. I moved onto that from Harshaw in '83; went there until '84, and I have lived there. I went there until the next year, I believe, and I undertook to file on the land right in the office here, in the land office here at Tucson; Mr. Brewster Cameron was in the office and rejected me, that the land was withdrawn; I think he was as receiver there, receiver of the land office, I think; I did not come myself; I sent the num-
445 bers to him; well, in a week or two, I think it was about a week, Mr. Cameron comes to my house and brought Mr. Wolfley with him, and there we had a talk in regard to the matter, you know, and he bought my house and leased me the place.
(Objection made that we are not trying another lawsuit.)
I am no scholar; well, no scholar, I say. I can read and write, but at the same time I could not read his writing.

(Objection to this line of testimony.)

In '85 I concluded I would leave the place and go back. I was mad that I had sold to him.

Q. You saw this northwest monument in the fall of '86?

A. Yes, sir.

Q. Was there any monument there before?

A. No, sir.

Q. Where did they bring the rock from to make the monument?

A. There is plenty of them; the whole country is covered with rock; there had been a line blasted from that same point, running towards Washington Camp along the side of the bluff, but I never seen any monument there until they built that one there that day.

Q. Was Mr. Wolfley along then or not?

A. I do not know; Mr. Wolfley was surveying somewhere about there; I do not know where.

Q. What was Mr. Cameron claiming against you, that you had claimed to own his grant?

A. Yes, sir.

Q. Do you know anything about where the old ruins of San Rafael were when you went into that country first?

A. I have seen what was considered to be San Rafael, as far as I know. It was some time after I went there before I saw them.

Q. Well, when did you first see them?

A. About—it was about '87; I heard talk of them before I seen them off and on from '80, by the hands.

446 Q. Which side of the river are these on?

A. On the west side.

Q. Down below Sheehy's place?

A. Yes, sir.

Q. How far are they from Slavens' place at La Zanja?

A. I guess they are three miles from there.

Q. Do you know where these old Indian ruins which have been testified to are located?

A. No, sir; never seen them; I worked on the ranch quite a bit, but the road always went up and down the valley so I never was in that particular part.

Q. Did you ever hear any other place called Old San Rafael down there?

A. No, sir.

Q. Now, on the west side of this grant, what as to there being any red hills out there, from Washington Camp and Mowry and to the north?

A. North and west of Harshaw there is quite a little red, and all the side next to the road is quite red.

Q. Where is the Penasco Peak that has been testified to here?

A. Right between the San Rafael Valley and the southwest corner of the divide, ridge between the Sonoite water and the San Rafael waters.

Q. Is that the place that has been testified to here as the Penasco marked Saddle Mountain?

A. Yes, sir.

Q. What was that always called when you first went there?

A. Always called Penasco Peak.

Q. Did you ever hear it called by any other name?

A. I was working for Mr. Brewster Cameron. Mr. Colin Cameron was not there, and I was digging a ditch, and I noticed the Penasco loomed up just after a rain. I says, "Look how the Penasco looms up," and he says, "That is Saddle Mountain, that is not the Penasco, we call that the Saddle Mountain," and I never heard it called Saddle Mountain before or since until I came here.

Cross-examination by Mr. HENEY:

Q. Who lived at Cottonwood Wells before you lived there?
A. Some Mexican lived there.
Q. What was his name?
A. Dogged if I know, now.
447 Q. Was it Irrigonia?
A. I believe it was.
Q. He was working for Mr. Cameron, was he?
A. I do not think so; I think he bought the Mexican out.
Q. Didn't you sell your house to Cameron?
A. Yes, sir; then I moved to town that very time.
Q. And Judge Barnes decided that he was entitled to the possession?
A. Yes, sir.
Q. You had a nice little bunch of cattle at that time?
A. Yes, sir.
Q. In '86, did you say they were surveying this and built this monument?
A. I do not know; but I understood they were surveying and five or six men came down. Mr. Cameron was surveying that line. It was in '86—I think it was in the fall of '86. It was Brewster Cameron that built that monument, I think.
Q. When did you say that Mr. Brewster Cameron was in Tucson as receiver of the land office?
A. I think it was in '84.

Redirect examination by Mr. POPE:

Q. Was he in both places, here and there, too?
A. I saw him.
Q. Was it the same or separate times?
A. It was in May or June, I think, I sent my application in here.
Q. He was not here and there at the same time?
A. I do not think so.

Recross-examination by Mr. HENEY:

Q. Did they see you when they were building this monument?
A. I do not think so.
Q. Where were you?
A. On the left of the road a couple of hundred yards. You can see that monument from the road; it is a big monument.

Redirect examination by Mr. POPE:

Q. There were more of them than there were of you?
448 A. Yes, sir: I think about five of them; they appeared to be.

Mr. HENEY:

Q. Were they armed?
A. I would not make any defense.

JOSEPH CAMPINI, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. Where do you live?

A. Tucson.

Q. How long have you lived there?

A. About four months.

Q. Where did you live prior to that time?

A. On the west side of the Huachuca Mountains.

Q. With respect to this San Rafael de la Zanja grant as claimed?

A. To the east.

Q. How far to the east from the center of the valley from the place called La Zanja?

A. About 9 miles.

Q. How long had you lived there?

A. I lived there since '81, in February, '81.

Q. Lived there from that time up to the time you came to Tucson three months ago?

A. Yes, sir.

Q. What was your business down there?

A. In that very place it was ranching and cattle raising.

Q. Riding the range?

A. Yes, sir.

Q. To what extent did you ride the range and become acquainted with that country?

A. I rode it every day.

Q. Have cattle ranging over there?

A. Yes, sir.

Q. When you first went to that place did you hear anything as to where the Old San Rafael was located at that time?

A. Yes, sir; it was near the old Enriquez place.

Q. From whom did you hear that was the Old San Rafael?

A. Enriquez himself.

Q. Did you ever go down to Santa Cruz?

A. Yes, sir.

449 Q. Are you acquainted with those people down there at Santa Cruz?

A. Yes, sir.

Q. During the time that you were living there to what extent did you go to Santa Cruz?

A. Pretty near every week.

Q. While in Santa Cruz at any time did you ever have any conversation or make any inquiries of the people down there as to the natural boundaries of this grant?

A. Yes, sir; that they claimed a grant there—that they own a grant there.

Q. Did you make any inquiries in your conversation with them as to these natural boundaries, such as the Old San Rafael and other points connected with this grant, the people of Santa Cruz?

A. Not directly about the San Rafael grant, because I was not interested in it.

Q. Did you state that you knew where San Rafael was?

A. I did.

Q. Did you ever make any inquiries of the people of Santa Cruz where the Old San Rafael was?

A. That that was the place.

Q. What did they call the Old San Rafael with respect to the international boundary line?

A. About 2 miles north on the river.

Q. On which side of the river?

A. To the west.

Q. North of Sheehy's place?

A. It is south of Sheehy's—southwest.

Q. And where with respect to Mr. Cameron's present residence, where he lives now?

A. East.

Q. Have you ever been to the place at La Zanja?

A. Yes, sir.

Q. Do you know the place where Mr. Cameron claims the center monument is?

A. Yes, sir.

Q. Have you ever been there?

A. Yes, sir.

Q. To what extent?

A. Many times.

Q. When was the first time you went there?

A. I guess I went there about '80, in June, the first time I went
450 over that valley there. I just did go there once in '81. I used to go every week a trip by Mr. Slaven's place in '82—all the time, about near every week, riding after cattle.

Q. Did you go on the mesa prior or subsequent to the time Mr. Cameron came?

A. Before and after.

Q. Did you at any time ever see any mounds upon that mesa?

A. Yes, sir; old Indian ruins that had been there 50 years before I came.

Q. What makes you think they were Indian ruins?

A. Because I seen these ruins in every part of that country, just the same.

Q. Did you ever hear from the people of Santa Cruz anything as to what these ruins were?

A. No, sir; never heard.

Q. Did they ever state to you that that was where the ruins of the Old San Rafael were?

A. No, sir.

Q. Have you been to that center monument since—that old Indian place that you spoke of—since Mr. Cameron came in?

A. Yes, sir; many times.

Q. Have you seen the pile of stones that he claims as his center monument?

A. I have.

Q. When you first went on that mesa, or to that place, when you came there was there any pile of stones, any monument, there?

A. No, sir; there was rocks scattered all over, and there is some yet to-day all over the mesa.

Q. Where these buildings used to be?

A. Where these Indian ruins were.

Q. For what distance from the mesa?

A. Probably 50 yards square.

Q. This monument is on the edge of the mesa, is it not?

A. Yes, sir.

Q. Were there any old rocks scattered on the mesa where this old monument is?

A. No, sir.

Q. When did you first see this monument?

A. About '84.

451 Q. Was that after Mr. Cameron came in or before?

A. After he came in.

Q. Now, have you ever been up to where Mr. Igo lives?

A. Yes, sir.

Q. When did you first go there?

A. In '80, in April.

Q. To what extent did you go there after?

A. I lived there 6 months in about 2 miles of Igo's spring northwest on the Sycamore Creek.

Q. Did you ever have occasion while you were living there after you went there and before Mr. Cameron came in to go out from Mr. Igo's?

A. Yes, sir; many times.

Q. Do you know where the wagon road is there?

A. Yes, sir.

Q. Did you ever go along that wagon road out there?

A. Yes, sir; I used to travel that wagon road to Fort Huachuca every week.

Q. Have you ever seen the northeast monument that Mr. Cameron is claiming now near Mr. Igo's?

A. Yes, sir.

Q. When did you see it?

A. About '84 I seen that monument there.

Q. Did you ever see it since?

A. Yes, sir; about 6 months ago.

Q. How close is it to the road?

A. It is in the center of the road.

Q. When did you first see that monument there?

A. '84 about.

Q. Was it there before that?

A. No, sir.

Q. Do you know what Mr. Cameron claims as his southeast monument?

A. I guess I do know where he claims it, but I am not sure if I know the right point, for these monuments being about three monuments up there since I have been there.

Q. When were they put there?

A. The first one was '84, the second up there in '87—about '84 the first.

Q. Was any survey made at that time, or being made?

A. Yes, sir.
Q. Who made the survey in '81?
A. Richardson made a survey in '81; they were traveling around piling up monuments.
Q. Who was?
A. Mr. Cameron and his men he had hired, I suppose.
452 Q. Who was?
A. Mr. Cameron and his men that he had hired, I suppose.
Q. Did you see Mr. Cameron there?
A. No; I did not, but I seen his men surveying and working at La Bota; McCarthy and Hildebrand.
Q. Did they cut any trees?
A. Not there; there is no trees there.
Q. At any place did you see any trees blazed?
A. There is a blazed tree over there at Igo's place.
Q. Where with respect to this monument?
A. To the north along the road there.
Q. Did you see at any time Mr. Colin Cameron himself with surveyors?
A. Yes, sir; I seen him in '87; Mr. Colin Cameron and Mr. Brewster Cameron and young Brewster Cameron, photographer, surveyor.
Q. Where did you see them; what part of this grant?
A. I saw them in front of this monument here.
Q. Which monument?
A. The southeast corner.
Q. Did you ever see him up there in the vicinity of the east center monument?
A. No, sir; but I followed him up the next morning and seen where they had been.
Q. What did you see?
A. Wagon tracks.
Q. Did you see the wagons where they went along?
A. Yes, sir; and buggy, photograph wagon covered up.
Q. Did you see any monument along there?
A. Yes, sir; on the edge of the Potrero Canada.
Q. Where was it with respect to the east center monument?
A. I guess the same place.
Q. Was there any monument there before?
A. No, sir.
Q. How far did you live from there?
A. About three miles.
Q. In what direction?
A. North.
453 Q. How far did you live from the monument?
A. I lived three miles and a half from the monument.
Q. That is where your cattle ranch was?
A. Yes, sir.
Q. Did you see any other monuments around there?
A. The next, about a mile there was another monument.
Q. Which direction?
A. South or southwest.
Q. Any others?

A. This corner one I have seen; there was a flat on top of the mesa and the monument down around the side of the bank.

Q. You saw wagon tracks there?

A. Yes, sir.

Q. Was there any wagon tracks there before?

A. No, sir.

Q. Was there any monument between the southeast corner of the grant and the east center?

A. There was no monument, but rocks are very plenty.

Q. Did you see anything as to whether these rocks that were picked up just right around and piled up to the monuments?

A. Yes, sir.

Q. Now, do you know what is called the Penasco in this grant?

A. I believe I do.

Q. How long have you known it?

A. Ever since I have been there.

Q. Since '80?

A. Yes, sir.

Q. Where is the Penasco?

A. It is towards Harshaw; the first mountain that you can see looking west from where I used to live.

Q. Where is it with respect to the place they have got marked on this map as Saddle Mountain?

A. Right in the same place, I think.

Q. Where is it with respect to the divide between the Santa Cruz River and the Sonoite?

A. That is on the divide.

Q. This Penasco that you speak of that is on the divide?

A. Yes, sir.

Q. Did you ever hear since you have been down there of any other Penasco?

A. No, sir.

454 Q. Do you know where the point they got marked Penasco on this map is located.

A. I do not know.

Q. Do you know an elevation up there?

A. I do.

Q. Did you ever hear that called Penasco?

A. No, sir.

Q. Can you see this Penasco which you say is located on the map as Saddle Mountain from the Santa Cruz Valley?

A. You have got to go up about old San Rafael; you can see it as you come up.

Q. Do you mean the old Enriquez place?

A. Yes, sir; you can see it from Slavens' old place.

Q. What is the appearance of this Penasco from the old San Rafael?

A. It is very abrupt looking on the south side.

Q. Is it from that direction a Penasco?

A. Yes, sir; that is what I call it, and what I have always understood it to be called now.

Q. Have you ever been up in that section about where the horse corral is?

A. Yes, sir.
Q. When?
A. In '80 I was up there.
Q. Have you ever been there since; and if so, to what extent?
A. I have been as much as twice a year there in that section of country.
Q. Do you know any arroyo north of the Santa Cruz Valley draining towards the Penasco?
A. There is one that comes by the horse corral from Frazier's mine.
Q. How does that run with respect to the Penasco?
A West.
Q. Does it run up there near the Canelo Hills?
A. It runs from the Canelo Hills towards the Penasco.
Q. I am inquiring about the point where this arroy' runs towards the Penasco; is that the Santa Cruz slope or the Babocomari slope of the Canelo?
A. On the south, to the Santa Cruz.
455 Q. Are there any mesas in the vicinity of where this arroyo runs west towards the Penasco?
A. Yes, sir.
Q. How as to there being oak trees there?
A. Oak trees all the way across to the foot of Canelo range.
Q. Where are they with respect to these mesas running towards the Penasco?
A. They are on it.
Q. When you first went to that country were there any spring or springs on the west side of the Santa Cruz River?
A. Yes, sir.
Q. Did you ever hear of the Salcito spring on the west side?
A. It is back of the old San Rafael spring, this old San Rafael ranch.
Q. When you first went there, describe that spring and state to what extent it was used when you first went there.
A. Mr. Tompson, he had a house there built of adobe, and a few head of cattle and a few head of horses, making his home there; it was a kind of a pool of water, kind of a lake, what you would call a pond; it never went dry; water there all the year round.
Q. What was it used for?
A. The men used to drink it and for the stock.
Q. About how far is that from La Zanja?
A. Three miles, I suppose.
Q. What direction?
A. Southwest.
Q. How does the quantity of water that was in that valley when you first went there compare with the quantity of water that is now found in that valley?
A. There was lots more water at the time I went there.
Q. To what do you ascribe the difference in the amount of water?
A. It don't rain any more and simply went dry and washed out.
Q. Any spring that you know down there or water sources that existed when you first went there that do not exist now?
456 A. But one spring, the Mesquite spring.

Q. Which side of the river is that on?
A. On the east.
Q. Did you ever hear of the Cerro del Cobre?
A. No, sir.
Q. Did you ever make any inquiries as to the Sierra del Cobre?
A. I never heard it until I came into this court.
Q. You know the mountains that run at the north end, at Mr. Igo's place, do you not?
A. Yes, sir.
Q. What were those mountains called when you first went to that country?
A. It was called the Huachuca Mountains.
Q. By whom was it called the Huachuca Mountain?
A. By everybody.
Q. What was it called by the people of Santa Cruz?
A. Huachuca Mountain.
Q. Did you ever hear it until in this court called Sierra del Cobre?
A. Never until I seen it on that map and heard it here.
Q. Do you know of any copper being found in the neighborhood of Mr. Igo's place?
A. No, sir.
Q. What was your first occupation in this country?
A. Mining.
Q. Was copper found any place else?
A. It is in Tanner's pass on the west side of the Huachuca Mountains.
Q. When did you hear that copper was first found there?
A. In '80, in November.
Q. Where is that with respect to the Huachuca Mountains, this Tanner's pass?
A. It is in the north of Tanner's pass going east; as you go east it is on the north of Tanner's pass.
Q. Where is it with respect to the Huachuca Mountains?
A. It is on the main mountains; it is formed of a spur.
Q. Where was it with respect to the Canelo Hills?
457 A. It comes out near the point of the Canelo Hills, spur from the Huachucas.
Q. How high are they?
A. They are probably 5,600 feet high.
Q. There is a pass between the Canelo Hills and the Huachucas?
A. Yes, sir.
Q. How long have you heard of these copper mines there?
A. Since '92, and I know copper mines since '80; Mr. Scott Slavens located that mine in '79.
Q. Did you ever hear of any old copper mines in that section of the Huachuca Mountains?
A. No, sir.
Q. Is that at this spur of the Huachuca Mountains where your mine is located?
A. On the springs; yes, sir.
Q. What springs?
A. I have got three tunnels from it, three inches of water flow.

Q. How does it compare with other springs in that section as to size?
A. If it would be cleaned out it would be a cienaga; it would flow; we got no use for the water.
Q. Did you ever hear of Mr. Igo's spring before he went there?
A. Yes, sir.
Q. How does its size now compare with its size before he went there?
A. It is a bigger spring; it was not open when I first seen it; there was lots of seapage water; that was all there was.
Q. How far is it from Mr. Igo's to your copper mine?
A. On a direct line it is about 12 miles.
Q. And about how far is it from your mine to the middle of the Santa Cruz valley?
A. It is about 15 miles to Old San Rafael.
Q. Which direction is your place from Slavens' old place?
A. East.
Q. At Mr. Igo's place when you first went there was there any cane?
458 A. No, sir; I never seen any cane in that part of the country until people brought them up from the lower part; Mr. Cameron has some and I have some on my place, set them out.
Q. What do you mean by your place?
A. The ranch and the mine; I got some in places.
Q. Was there any cane at Mr. Igo's place when you first saw it?
A. No, sir; I do not think there is any cane there now.
Q. By cane I mean carricillo?
A. I understand it; I never seen any in that part of the country.
Q. How far is it from Mr. Slavens' place to Mr. Igo's place as you travel it?
A. It must be about 16 or 17 miles, I should judge; I never measured it and I have no manner of measuring it.
Q. Outside of this place, do you know of any other place where copper is taken?
A. Further south there is a mine that we have been taking out copper.
Q. Which side of the mountains?
A. West side, on the spur of the west side.
Q. How far is it to your mine?
A. About 4 miles.

Adjourned until to-morrow.

MAY 22nd, A. D. 1899, 10 a. m.

J. B. STEPHENSON, sworn on the part of the Government, testified upon direct examination by Mr. Barnes as follows:

Q. Do you know the place where Mr. Igo now lives and the spring?
A. Yes, sir; I knew it in '69.
Q. How large a spring was it when you first saw it?
A. It was quite a large spring, about 3½ feet wide where it flowed down into the valley where it come out of the hills.
459 Q. Did you know a man in that neighborhood by the name of McLaughlin?
A. Yes, sir.

Q. What year was that?
A. '81, '82, '3, or '84, I think.
Q. Were you there that year?
A. I was there.
Q. What was McLaughlin doing?
A. He was surveying.
Q. Do you know what he was surveying?
A. He was surveying a grant, but I do not know who it was for; he did not tell me.
Q. Do you know a road that runs from Igo's around the north of the Huachucas towards the foot?
A. Yes, sir; and traveled it.
Q. Where was it with reference to any monument, if there was any?
A. I never knew of any monument until put up by us.
Q. Who put up this monument?
A. This man, surveyor, and I, and his man that he had employed.
Q. How much of a monument did you build?
A. About between 3 or 3½ feet.
Q. What did you build it with?
A. Rock.
Q. Where did you get the rock?
A. Right round there.
Q. Did you help build that monument?
A. Yes, sir; and the surveyor, McLaughlin.
Q. Was there any monument there before you built this monument?
A. Not that I seen.
Q. Where did you build that monument with reference to the road?
A. The road run to the east of the monument; we built it on the southwest of the road because we used the old road to run up to the camp and Mr. Igo's place.
Q. How far from the road did you build the monument?
A. I could not tell you; I know where the road is now; I do not know whether they changed it; I know about where it was then.
460 Q. How near the road was it then, the monument?
A. I could not tell, because it is quite distant.
Q. How far is it away from the spring?
A. I think it was quite a little ways.
Q. About how far away?
A. Perhaps it was a mile, more or less.
Q. What direction was it from the spring?
A. It was southwest; it is right in the side of the mountains, that spring is.
Q. You start from Igo's spring to go to that monument, what direction would you go?
A. You go west of the Huachucas.
Q. If you go from Igo's spring to that monument, can you tell me the direction you would go?
A. We go, in the first place, southwest towards San Rafael.
Q. How far do you go?
A. I do not know; I can not tell you that.
Q. Do you know a road that runs from Igo's spring to Fort Huachuca?

A. Yes, sir.
Q. Where was this monument with reference to that road?
A. It was about a mile to the south; it round a point; it is a kind of a mesa comes down from the Huachucas; it was below; it is southwest.
Q. From Igo's spring?
A. Yes, sir.
Q. What direction is Fort Huachuca from Igo's spring?
A. It is southeast; It is a little south of east, I think.
Q. If you go from Igo's spring to that monument, would you go further away from Fort Huachuca or towards Fort Huachuca. Going from Igo's spring to the monument would you go west or towards Huachuca?
A. You would go west.
Q. Would you go away from it in going from Igo's spring to Huachuca?
A. (No answer).
461 Q. Did you, after '83, see a monument there until you built it?
A. No, sir.
Q. Did you see it there after you built it?
A. Yes, sir.

Cross-examination by Mr. HENEY:

Q. When you were with Mr. McLaughlin on that survey at that point you built lots of monuments?
A. Yes, sir.
Q. Why did you build them up?
A. Because he told me to.
Q. You stuck flags in them to take observations?
A. No, sir.
Q. How did he take his observations?
A. I do not know; I am no surveyor.
Q. What did you do for the surveyor?
A. I chained.
Q. How often did you put up monuments?
A. Whenever he said so.
Q. How often was that?
A. I do not know.
Q. Did you put them up every half mile?
A. I do not know; I am no surveyor.
Q. Does it require a surveyor to testify about monuments?
A. You do what a man tells you to do; you don't interfere with his business.
Q. Did you put up one every half mile?
A. I do not know; I could not tell you that; I am not going to swear to anything that I do not know; I know I put monuments up.
Q. Did you blaze trees over the line?
A. I may have done so.
Q. Were you along the U. S. Government line at that time?
A. I do not think so.
Q. Was Mr. McLaughlin running a Government line out there at that time?
A. Not that I know of.

DAVID ALLEN, sworn on the part of the Government, testified, upon direct examination by Mr. Barnes, as follows:

462 Q. When did you first go down into the country known as Washington Camp?

A. I went there in '78.

Q. How much of a settlement was there at Washington Camp when you first went there?

A. There was none.

Q. The settlement come on later?

A. Yes, sir.

Q. How rapidly?

A. It come on them rapidly after I was there.

Q. And how much of a settlement was over at Harshaw when you went down there?

A. 7 people living there.

Q. They filled up afterwards?

A. They filled up a while afterwards.

Q. What did those people settle in that country for?

A. For mining.

Q. Now during that time did you go down in San Rafael?

A. I did.

Q. Who was living down on the Santa Cruz valley when you first went in?

A. A man named Enriquez; another Mexican, I don't know what his name was.

Q. And who else was living down there?

A. There was nobody.

Q. Nobody living at what is now called Lochiel at that time?

A. No, sir.

Q. Nobody living at Lochiel at that time?

A. No, sir.

Q. Nobody living at Sheehy's place?

A. No, sir.

Q. Came in there afterwards?

A. Yes, sir.

Q. Where was Enriquez living?

A. He was living on the west side of the Santa Cruz River, up on a little knoll on an adobe—some ruined houses.

Q. Do you know the place known as an old Indian village?

A. Yes, sir.

Q. Describe the ground.

A. That is up on the east side of the river.

Q. And where from Enriquez' place?

A. It would be I think about 4 miles.

Q. Up or down the river?

A. Up the river from Enriquez' place.

463 Q. And on the east side of the river?

A. Yes, sir.

Q. What was the appearance in general of the ruins up at the old Indian village?

A. It looked like a street running through, between the old adobe

houses when they were there, just coming up along the mesas, about like the side of the houses.

Q. What were these ruins? Were they ruins of an old Mexican or Indian village?

A. Yes, sir.

Q. How many times did you go, when you were in Washington camp, to that place?

A. I was there many times; I could not state exactly how many times; time and time again.

Q. When you first went did you see any monuments of stone at these Indian ruins?

A. I know there was none there.

Q. And when did you first see one in there, if ever?

A. About seven years after I left there.

Q. What kind of a monument was it then?

A. It was a little, small monument, very small.

Q. What material?

A. It was built up out of rock.

Q. And did you see any survey made shortly before you saw that monument or not?

A. No, sir; I do not know as there was at all.

Q. Was that monument built there before or after Mr. Richardson was down there?

A. It was after Richardson.

Q. And before Mr. Cameron came?

A. It was built there after Mr. Cameron came in.

Q. How lately have you seen these Indian ruins?

A. I saw them, I think it was about in March of this year or April; I was down there this year.

Q. I will ask you to describe what difference there is in the appearance of these Indian ruins now than when you first saw them?

464 A. I did not see any change in them particularly; they are about the same.

Q. Do you know a man by the name of A. A. Green?

A. Yes, sir.

Q. When did you first see him—meet him?

A. The first year was in '79.

Q. Where did you see him?

A. At La Noria now.

Q. And how well acquainted with him did you become?

A. I got very well acquainted with him; he stopped with me nearly two years, right there with me.

Q. Where?

A. At Washington camp.

Q. And what years was he with you at Washington camp?

A. In '81 and '2.

Q. Did he tell you anything about the Mexican grant called San Rafael de la Zanja?

A. Yes, sir.

Q. When he first came did he show you where he claimed it was located?

A. Yes, sir; he showed me.

Q. And in looking up that valley from these ruins north, what, if any, mountain peaks do you see off towards Harshaw?

A. There is one particular mountain that can be seen.

Q. What do they call that?

A. The Penasco.

Q. How did that peak look from down in the center of the valley; what was its appearance?

A. It looked steep up there, very high and sharp over all the rest.

Q. Did Mr. Green go out on the ground and show you where his northwest corner was?

A. Yes, sir.

Q. Where did he claim his northwest corner was as he claimed it; where did he say that he located his northwest monument when he first talked to you about it, or where did he take you to, if anywhere?

A. It would be south or more southwest of this mountain, about three miles or over on what they call Red Hill.

Q. This Red Hill northwest of the Penasco?

A. Yes, sir.

465 Q. Describe that red hill that he pointed out to you.

A. He said that was his monument of his ranch.

Q. Describe this red hill he pointed out to you.

A. It is a round, large rock mountain hill.

Q. How about it being as high as the Penasco, or lower?

A. It is not as high, I do not think.

Q. You know a red mountain as you drive from Harshaw down the railroad near Crittenden, and a big mountain to the left; is that the hill he pointed out to you?

A. That is the red hill.

Q. It was near U. S. mineral monument number 2?

A. Yes, sir.

Q. Where is that monument with reference to the hill Green pointed out to you first?

A. That would be southeast of that.

Q. How far away?

A. I think a mile and a half away.

Q. Did he afterwards point out any other place for his northwest corner?

A. No, sir.

Q. Did Green always claim that to be the place?

A. Yes, sir.

Q. What direction is this red hill from Harshaw?

A. It is north or northwest from Harshaw.

Q. How far away from Harshaw?

A. It would be 3 miles or more; three miles anyhow.

Q. Did Mr. Green tell you what his southwest corner was?

A. Yes, sir; he said it was where he showed me three little hills at a mile and a half from San Antonio Pass.

Q. What little hills are they?

A. Three little hills he called them.

Q. And what monument did he show you?

A. He claimed that this was the southwest corner.
Q. And what was there that he showed you?
A. He showed a monument with a stake in it.
466 Q. What kind of a monument was it?
A. It was a stone monument.
Q. And what was on this stake?
A. I do not recollect any mark on it; it was a black-oak stake.
Q. Did he afterwards show you any other?
A. Yes, sir.
Q. Did he ever show you any other corner?
A. Yes, sir; he claimed his monument was up in the pass.
Q. How long after that was it that he pointed out these hills; how long a time was it from the time he pointed out these three little hills above the San Antonio Pass?
A. I think it was about 5 years afterwards.
Q. And what did he say about it then?
A. He said that that was his monument up there then.
Q. What reason did he give for the change?
A. He did not give any reason why.
Q. Did you go back to the first monument?
A. Yes, sir.
Q. What did you find?
A. I did not find anything there.
Q. What did he show you in San Antonio Pass?
A. He showed me a pile of stones there that he piled up on top.
Q. Did he give any reason about why he made that change a mile and a half further west?
A. No, sir.
Q. Did he say anything to you about mines?
A. Yes, sir; about taking them in.
Q. What place?
A. Washington Camp; that these three little hills would not take in Washington Camp.
Q. And what then?
A. After that he claimed this place—monument—up in the pass.
Q. You say that line run north from the three little hills would not take in Washington Camp?
A. No, sir.
467 Q. Would the second place in the San Antonio Pass take in Washington camp?
A. Yes, sir.
Q. You spoke of the Penasco; what was the general name of that penasco when you went down in that country?
A. I never heard anything but the one name, Penasco; never heard anything else.
Q. Did you ever hear any other mountain called the Penasco?
A. No, sir.
Q. Do you know a peak that is north of this Penasco peak, north of that several miles?
A. Yes, sir; I know a peak.
Q. Did you ever hear that called Penasco?

A. Never heard any name for it.

Q. Now, this mountain they have marked on this map Saddle Mountain, is that the same mountain that you call the Penasco?

A. Yes, sir; the same.

Q. Did you ever hear of Saddle Mountain?

A. Never heard it before I came here in this court.

Q. Did you ever hear the people down there call it the Saddle Mountain?

A. No, sir; I never did.

Q. When did you first hear this particular peak called the Penasco?

A. '78.

Q. Who were the people that called it the Penasco?

A. This Mr. Enriquez, who lived down there on the valley; he called it the Penasco.

Q. What was his business?

A. He was a cattle man.

Q. What did the people generally after you came in call that peak?

A. I never heard it called anything else by the people.

Q. Did you ever go over to Campini's camp?

A. Yes, sir.

Q. Do you know these Canelo Hills?

A. Yes, sir.

Q. Do you know the point where the Canelo Hills runs into and joins on the Huachucas at Campini's place; is Campini's place north or
468 south of it?

A. South of the point where the Canelos run in and joins the Huachucas.

Q. What do you know about springs out there?

A. I know there are springs there.

Q. Are those springs up in the mountains or on the foothills—the mesa?

A. On the foothills.

Q. Where do they run their water into?

A. It runs down in Parker's Cañon and Potrero Creek.

Q. Then it runs in what they call the cañon that comes down into the Santa Cruz waters?

A. Yes, sir.

Q. Any other springs there?

A. No; I do not know of any of that sort.

Q. When you first came in that country did you ever hear the Huachucas called the Sierra del Cobre?

A. I am not able to say.

Q. Did you ever hear any part of them called that?

A. Not until I came in here.

Q. Did you ever hear of copper being found over in that range south?

A. Yes, sir.

Q. Down in the Huachucas, there in Tanner's Pass?

A. Yes, sir.

Q. Did you ever hear of copper being found except in that pass?

A. Never did.

Q. Did you ever hear of copper being found on Igo's place?

A. No, sir; I never did.

Q. When did you first go over to Igo's place?

A. I went there in '84 for the first time.
Q. When did you first hear of copper being found in that mountain?
A. In '78.
Q. Did you hear the kind of copper that was said to have been found?
A. I heard it on finding the old copper mines over there—a lost mine, and found while I was there.
Q. Did you go to this mine?
A. No, sir; I did not.
Q. Do you know anything about a monument about a mile and a half north and east of Igo's?
A. I have been to it.
Q. When did you first see that monument; about what year?
A. I saw it first in '95.
Q. Was you there in away back in '81 or '2 at that point?
A. No, sir; not right at that point.
Q. Did you go on the road over from Igo's to Fort Huachuca in the early days?
A. I have been on the road, but not right along there at that point.
Q. Did Green point out to you any north center of his claim?
A. No, sir; never did.
Q. What did he say about it?
A. He never claimed any north center to me.
Q. Did he state anything about the north center at all?
A. No, sir.
Q. Where did he state the center was?
A. Down about three miles from the international boundary line. He showed that to me.
Q. Did you and he go together where this cañon runs west?
A. No, sir; he never went with me there.
Q. Where was the place called San Rafael de la Zanja?
A. They did not call it that; they used to call it San Rafael.
Q. Do you know where Enriquez lived?
A. Yes, sir.
Q. Where is that with reference to these old Indian ruins?
A. It is about a mile north of the line—of the boundary line.
Q. Where was that with reference to these Indian ruins if you draw a line east and west from these ruins; where was San Rafael—north or south of that line?
A. South of it.
Q. And how far?
A. About 4 miles.
Q. Which side of the river was San Rafael?
A. On the west side.
Q. Where was the place called La Zanja?
A. That was north from San Rafael about 4 miles.
Q. And what was there?
A. There was nothing there then.
Q. Was any water there then?
A. Yes; there was water there.
Q. Describe the water that was there.

A. There was a lake; there was a deep pond.
Q. Anyone living near it?
A. No, sir; nobody.
Q. Where was Slavens at that time when you first went there?
A. I do not know where he was.
Q. When did he come in there?
A. In '79.
Q. Where did he locate?
A. He located up there near what they call the old Indian ruins.
Q. Who first settled near this place called La Zanja?
A. That is about the place where Slavens settled.
Q. How near to where Slavens settled?
A. It would be about a quarter of a mile or half a mile.
Q. Do you know where Sheehy settled when he came in there?
A. Yes, sir; he settled on the east side of the river.
Q. What was Enriquez' name for the grant?
A. Just San Rafael grant, he called it.
Q. Was he holding under any grant?
A. Never said anything about a grant to me.

Q. What did you hear this place called (the Indian ruins) when you first went in?
471
A. I never heard it called anything.

Q. What was the place called at San Rafael?
A. Down at Enriquez' place?
A. Yes, sir.
Q. Yes, sir. Did you ever hear any other place than Enriquez' place called San Rafael?
A. No, sir; that is his place.
Q. Where did he live from where Sheehy afterwards settled?
A. He lived west of Sheehy on the west side of the river, almost due west across the river.
Q. Where from the present San Rafael ranch of Mr. Cameron—in what direction?
A. Mr. Cameron is west.
Q. Was this place where Enriquez lived north or south of Mr. Cameron?
A. It was east of Cameron's.
Q. Now, then, do you know that country right east of Saddle Mountain for 7 or 8 miles?
A. Yes, sir.
Q. Do you know the course of the watershed up there where the horse corral is?
A. It runs right from the horse corral almost south along down in the Santa Cruz River; from the horse corral down it makes a bend there, running east for a ways, and then it turns and runs to the south.
Q. What direction does the water run from the horse corral—I mean from that country for three or four miles square there?
A. The water comes down and runs westward, and then makes a bend and then it runs south.
Q. Does it run from that high altitude there south of the horse corral towards or away from the penasco?

A. It runs south from there.

Q. If you stand out 7 or 8 miles east of the penasco and in the neighborhood of the horse corral, does the water run towards the penasco or away from it?

A. It would run away from it.

472 Q. And go off in the direction of the Canelo Hills?

A. Yes, sir.

Q. Don't run towards the penasco at all?

A. From over there it runs towards the penasco; it runs down west and then turns and runs south.

Q. Into what streams does that water run?

A. Santa Cruz and the Sonoite.

Cross-examination by Mr. HENEY:

Q. Where do you live now?

A. Washington Camp.

Q. You claim to own some mines out there, do you not?

A. Yes, sir.

Q. These are called the Pool group?

A. Yes, sir.

Q. You have sold them recently, have you not?

A. I have bonded them.

Q. And got a good payment down?

A. No, sir; nothing down.

Q. And under that bond you are to deliver a deed within what time?

A. In three years.

Q. You contracted to deliver a United States patent within three years?

A. No, sir; a perfect title.

Q. A perfect title?

A. Yes, sir.

Q. Relieved from any land-grant claim?

A. There is nothing said about that.

Q. You contracted to deliver title at the end of three years—to deliver this deed or bond at the end of three years?

A. When they paid me the money.

Q. And they in the meantime to take immediate possession of the mines?

A. Yes, sir; when they paid me.

Q. Don't they take possession now?

A. Not now.

Q. They are not allowed to move anything away from there and take possession and work the mines and keep the ore on the dumps until they pay you?

A. Yes, sir.

Q. Whereabouts are these mines?

A. They are right in Washington Camp there; surround it.

473 Q. Do you know where a hill called El Caloso is?

A. No; I do not know as I do.

Q. Do you know Washington Hill?

A. Yes, sir.

Q. Washington Hill has a large lime top?

A. Yes, sir.

Q. West of the Pool group of mines is Washington Hill?

A. Yes, sir.

Q. In what direction?

A. Right on the hill; some of them; right on the hill and around it.

Q. The principal ones are right on the hill?

A. No, sir; not the principal ones.

Q. On which side of the hill are portions of them?

A. They are on the east side, and they are on the northwest side of the hill.

Q. Where is the balance of the group of mines?

A. Some on that hill right north of it and right south of it.

Q. Will you see on this map, made by George J. Roskruge, marked "Plaintiffs' Exhibit F 52," if Washington Hill is correctly represented at the point where the letter "O" is made in the word Caloso on the point taken as the west center monument of this grant?

A. Yes, sir.

Q. Is the dot which is on the red line opposite the dot on the black line which is marked Cerro, just to the southwest of the point marked El Caloso—would a line connecting that west center with the Red Mountain, which stands at the north end of the Patagonia Mountains, where the road turns towards Mowry—would such a line leave the Pool group of mines within the San Rafael grant or not?

A. It would leave them east of that line; yes, sir.

Q. Now, if the Pool group lies entirely north of the point taken as the west center monument—that is, to the hill southwest of the Washington Hill—they would be entirely north of such a line, of such a point?

A. Yes, sir.

474 Q. Then if the southwest monument taken by Green must be connected by a straight line with the west center monument of this grant, any change in that can not possibly affect the location of the Washington Camp mines with reference to this grant, can it?

A. I do not understand that is the monument he claims, the southwest monument.

Q. If a line is run from a hill southwest of the Washington Camp Hill to the south center monument of this grant at the mouth of the Potrero, where it comes in the Santa Cruz Valley, would not the Pool group of mines lie to the north of such a line?

A. Yes, sir.

Q. If the Red Hill, which is at the north end of the Patagonia Mountains, where the road runs to the Sonoite, is joined by a straight line to a hill which lies southwest of the Washington Hill, and that hill is southwest of the Washington Hill is joined by a straight line to the south center monument, which is at the mouth of the Potrero in the Santa Cruz, would not the Pool group be within the grant?

A. Yes, sir; they would.

Q. Then it could not make any possible difference about Green moving his southwest corner, as to whether or not the Washington Camp mines fell within the grant or not?

A. It would make a difference if he had moved it east.

Q. You think it would?

A. The further he moves to the west the more it will take in.

Q. How do you distinguish between Indian ruins and Mexican ruins where they are very old?

A. I distinguish from the way that they take up on the ground.

Q. Is that the only way you distinguish them?

A. (No answer).

Q. Don't you know it is a fact that Indian ruins are usually in
475 a circular form?

A. I do not know that.

Q. Don't you know as a matter of fact that Mexican villages are usually in a square form?

A. I do not know that either.

Q. What is the difference in the pottery that you find in an old Indian village and that you find in an old Mexican village—ruins of a village?

A. I do not know anything about the pottery around Indian villages.

Q. Don't you?

A. No, sir.

Q. Do you know where Tanner's Pass is in the Huachuca Mountains?

A. Yes, sir.

Q. What direction is Tanner's Pass from the point where the canon of the Potrero goes round the end of the Canelo Hills?

A. It would be considerable north of east; you can say northeast or say due east.

Q. There is a road comes up on the mesa to the right of the Potrero Canada, is there not?

A. Yes, sir.

Q. Which road runs north around the point of the Canelo Hills and goes north by Igo's, up through the Sycamore Canon?

A. It don't go through the Sycamore Canon.

Q. Where does it go through?

A. I never drove up the Sycamore Canon; the way I understand is going through the Canelo Hills, through that Canelo Pass.

Q. Have you ever been over the road that runs where the mesa at the head of the Potrero Canada goes round the Canelo Hills?

A. No, sir.

Q. And a road runs up Sycamore canon that comes out by Igo's?

A. I have never been over that.

Q. Have you ever been through Tanner's Pass?

A. Yes, sir.

Q. How high up is it?

A. It is 5 or 6 hundred feet high; it is just a mere depression
476 in the mountains; there is a pass that you go right down into; it is a great high rocks; on the side it must be, I think, 600 feet.

Q. The summit of the pass is a mere depression from the tops of the mountains, is it not?

A. I could not say.

Q. How can you say it is below the tops of the mountains on either side where the pass goes through?

A. It would be a mile or so from the top of the mountains down to it; a mile; on the foothills it would be over a mile; before Tanner built a road there to haul lumber it was a pretty rough trail.

Q. Were you over it before that?
A. No, sir; I was not.
Q. Never over it before that?
A. No, sir; I would go through the top of Tanner's Pass and straight *on to Tombstone down the valley.*
Q. It pitches off very steep declivity, does it?
A. No, sir; two men horseback can go down abreast.
Q. And it starts down on either side a very steep precipice—on either side of the trail?
A. Yes, sir.
Q. The mesa is up above 5 or 6 hundred feet?
A. I think the distance is a quarter of a mile or more than that.
Q. And on one side the bluff almost hangs over the trail, does it not?
A. Yes, sir; at one place right close.
Q. How wide is it between the sides of the box canon?
A. I do not think it is over 40 or 50 feet there at one place.
Q. Were you out in that country when there were Indians around?
A. Yes, sir; I did not go over that until after I was there three years, and I was not afraid then.
Q. Why?
A. Because there was no Indians around *around* there.
Q. If you knew the Indians were around it would be the last
477 place you would go?
A. Yes, sir; I would not want to go over there when there were Indians around.
Q. You know where that lost copper mine is that was found in the Huachuca Mountains, do you?
A. Yes, sir.
Q. Where is it?
A. It is on the west side of the Huachuca Mountains—on the side of the end of it like.
Q. You heard a tradition about that lost mine when you first went out?
A. Yes, sir.
Q. The tradition that there was a copper mine on those mountains—there had been one and lost?
A. Yes, sir.
Q. And a number knew where that mine was, did they?
A. No, sir; they were looking for it for years.
Q. They were looking for it and heard the tradition that the Spanish soldiers from the vicinity of Santa Cruz had brought copper over there from the Huachuca Mountains?
A. Not until I heard it here in this court.
Q. You have heard it here since you came here?
A. I heard it from the witnesses here.
Q. This old Mexican witness?
A. No, sir. I cannot talk to them; I cannot talk Mexican.
Q. Can not understand it either?
A. Very little.
Q. When you first went out there you could not understand it at all?
A. No, sir.

Redirect examination by Mr. POPE:

Q. Do you know where Mr. Campini's mine is now?

A. Yes, sir.

Q. What direction is this lost mine that you spoke of, that has been found, from his mine?

A. It is southeast.

478 Q. About how far?

A. It must be about 15 miles, I should judge.

Q. These Indian ruins you spoke of, did you say you saw them this year?

A. Yes, sir.

Q. Who was there with you?

A. Mr. Julius Kunde and Mr. Pope.

Q. Is that myself?

A. Yes, sir; and Mr. Tipton, and Mr. Hilton, and Mr. Finley.

Q. The place you went to, this place that you have spoken of, that is the Indian ruins, is it?

A. Yes, sir.

Q. When you first went to that country, what did you hear from the people living there as to whether these were Mexican or Indian ruins?

A. I never heard of any ruins there at all at that time.

Q. What have you found on that mesa that indicates what it is?

A. I found a rock like a spear.

Q. Did you see any arrowheads?

A. No, sir.

Q. Do you know what metatas are?

A. Yes, sir.

Q. Did you see any of them there?

A. I never did.

Q. What about broken pottery?

A. I never saw any broken pottery.

Q. When did you locate this Pool group of mines that you have referred to in your testimony?

A. In March, 1878.

Q. How many mining locations are there in that Washington Camp now, or were there at the first of this year, roughly speaking?

A. I suppose there are 50 or 60.

Q. Are the assessments being kept up on them?

A. Yes, sir.

Q. And at the Harshaw Camp, at the first of this year, how many locations there being kept up?

A. I do not know that.

Q. Are there assessments upon locations being made and assessments being kept up, and roughly, upon about how many?

A. Yes, sir; I think 25 or 30 anyhow.

479 Q. And at Mowry the first of this year, roughly speaking, how many?

A. I think there are 8 or 10.

Q. You go to these places frequently?

A. Yes, sir.

Q. How far is Mowry from Washington Camp?

A. We call it 3 miles and a half.
Q. And how far is Harshaw from Washington Camp?
A. It is 9 miles I think they call it; ten by wagon road.
Q. How long has there been a camp at Mowry and Harshaw?
A. Been a camp at Mowry ever since 1861.
Q. And at Harshaw?
A. I think there has been a camp there since 1877.

Recross-examination by Mr. HENEY:

Q. You heard of the Mowry mine ever since the rebellion?
A. Yes, sir.
Q. It was an old mine at that time, was it not?
A. No, sir; I do not understand that it was. They found it during that time.
Q. Who did?
A. Mowry and the officers that were with him.
Q. Do you think that they found it then?
A. I think that it was at that time; that is what they told me.

D. G. CHALMERS, sworn on the part of the Government, testified upon direct examination by Mr. Barnes, as follows:

Q. How long have you lived in this country?
A. Since '86.
Q. During that time had you occasion to go over the grant in question?
A. Yes, sir.
Q. Do you know where the north center monument of the Santa Cruz village is?
A. No, sir.
Q. Do you know where the village of Santa Cruz is?
A. Yes, sir.
Q. Do you know where Lochiel is?
A. Yes, sir.
480 Q. About how far from the Santa Cruz River?
A. It is about a mile.
Q. Any water at Lochiel?
A. Yes; there is a spring; there is one back of Lochiel.
Q. How far back?
A. It is 400 *hards*.
Q. And from what hill did you say that water comes from?
A. From Washington Camp.
Q. And how far is Washington Camp from there?
A. 5 miles.
Q. Do you know where Mr. Cameron now lives?
A. Yes, sir.
Q. This old Indian village—do you know where that is?
A. I know where it is reputed to be.
Q. Have you been to it?
A. Yes, sir.
Q. Where is it?
A. It is on the east side of the Santa Cruz River.
Q. And how near down to the river?

A. Right on it; very near it—within 40 or 50 yards.
Q. Did you ever notice any artificial monument of stone there?
A. I never noticed it.
Q. Now, looking up to the northwest, what peak, what mountain peak, if any, is most prominent?
A. The Penasco.
Q. How far away is that?
A. I do not know; it is probably 6 or 8 miles.
Q. As you look at it from the Santa Cruz River, how does it appear?
A. It looks like a great big rock; it looks like a solid stone on end, or big rock; you can notice that from the Terrenata ridge in Mexico.
Q. Where is Terrenata ridge in Mexico?
A. It is southeast from La Noria about 25 miles.

Q. Is there any other prominent peak or mountain that looms
481 up over that valley than the Penasco?

A. No, sir.
Q. As you look towards the northeast what mountains do you see?
A. The Huachuca and the Canelo Hills.
Q. Southwest of the Canelo Hills what kind of country is it?
A. Some of it is very rough.
Q. And the mesa from the horse corral?
A. I do not know where the horse corral is.
Q. Out east from Saddle Mountain about 6 or 8 miles and then looking towards the Penasco, what kind of country would you see?
A. I think you would see some rough country, elevations, much cut up.
Q. High mesas?
A. Yes, sir.
Q. And what direction would these elevations carry the water from a point out about 8 miles east of the Penasco?
A. I think to the Santa Cruz Valley.
Q. How would they go?
A. They would run about east or southeast.
Q. Will you turn around to this map (Plaintiffs' Exhibit F 52)? You see where the horse corral is on that map. Where would the water run? This is the Santa Cruz Valley here.
A. I think it would run towards the valley; I do not know.
Q. The Santa Cruz Valley is here between the Huachuca Mountain on the east and the Patagonia Mountains on the west, and the red rock country on the north?
A. Yes, sir.
Q. Where does the water run between the Sonoite and the Santa Cruz?
A. I do not know; I could not tell you; I have never been in that country.
Q. Do you ever go to Campini's ranch?
A. Yes, sir.
Q. Any springs out there?

A. Yes, sir.
482 Q. Where are they located?

A. One of them is located about 12 miles from La Zanja and the other is near the line.

Q. Where is Lochiel located?
A. Lochiel is right on the line.
Q. Do you know where the Potrero Canada is?
A. Yes, sir. There are a number of springs out in that neighborhood.
Q. Going down this canon towards Igo's where does the Canelo Hills join the Huachucas?
A. At Jim Carr's old horse ranch.
Q. Where is Collins's ranch from that spring?
A. About 3 miles west from there. There is a large spring there.
Q. About how far is Jim Carr's old horse ranch from the old Indian village?
A. I do not know. I suppose it would be 15 or 18 miles.
Q. Do you know where Campini's copper mine is?
A. I do.
Q. How far is Jim Collins' old horse ranch from that spring there?
A. About 400 yards.
Q. How about copper there, and stains—evidences of copper?
A. I have seen a piece that came from there; I never saw it myself.
Q. Does this hill come towards the spring there?
A. Yes, sir; it is a very steep hill, abrupt, just like a wall for a mile or so.
Q. As you go east from Tanner's Pass are there any well-known landmarks in there?
A. I do not know.
Q. Tanner's Pass is well known?
A. Yes, sir; that is ever since I have been there.
Q. Now, going over to Washington camp—what kind of a camp is that; people and mining to what extent?
A. Yes, sir.
Q. Any valuable mines there?
A. Said to be; one sold lately I think for $125,000.00 or $130,000.00.
Q. How about the Duquesne mines—as to their worth?
A. I do not know; they would be worth probably several hundred thousand dollars.
483 Q. Do you know how much they got out?
A. No, sir.
Q. And how about the Pool Group?
A. That is considered very valuable.
Q. And how about the mines D. G. Chalmers has; are they very valuable?
A. Well, we like them pretty well; yes, sir.
Q. And how about the Mowry mines; are they valuable mines?
A. Yes, sir.
Q. And the Harshaw mines, the Alta and the Hermosa; are they valuable?
A. They are worth several hundred thousand dollars.
Q. Do you know where the place is in the Santa Cruz Valley known as the San Rafael de la Zanja?
A. I do not know about the tract. I know where the old San Rafael is; Cameron's home ranch.
Q. Which side of the river?

A. On the west side.

Q. Where from Sheehy's?

A. A little southwest.

Q. Point it out on the map.

A. This is where Cameron lives. There is Lochiel on the line, and here is old San Rafael. Cameron lives about right there.

Q. San Rafael ranch is north of Lochiel?

A. As I understand it; it comes right here somewhere; that is, if this line is correct.

Q. The old San Rafael stands on the bank of the Santa Cruz River?

A. Up on the highest part of the bank, that is from the cienaga.

Q. That is called the old San Rafael ranch?

A. Yes, sir.

Q. How far above this old San Rafael ranch is La Zanja?

A. That would be about 5 miles.

Q. How about water there?

A. The old ranch house has got a spring; above that is the cienaga.

Q. Now, look upon this map. You see a point there that is marked Saddle Mountain; is there a peak about three or four miles up north of that called the Penasco?

A. No, sir; I never heard of any other place called the Penasco except that Saddle Mountain.

484 Q. This peak here that Mr. Roskruge has got marked Saddle Mountain?

A. The same peak; yes, sir. They have either left off the Penasco or else call the Saddle Mountain the Penasco.

Q. Do you know where the first of the Canelo Hills joins to the Huachuca Mountains?

A. Yes, sir.

Q. Where is Collins's ranch from that place?

A. It is round about the head of this Potrero Canada; it is around about in here where this letter C is in lead pencil; about in there, some place.

Q. Is there a wagon road in there from Igo's spring to Collins's ranch?

A. Yes, sir.

Q. Can you tell on that map from the point that you marked with the letter C where that copper mine is?

A. It is about 3 miles east of that; in the pass known as Tanner's Pass.

Q. Did you ever see a monument a mile and a half east of Igo's on the road?

A. Yes, sir.

Q. Is that higher or lower than the spring?

A. Lower; you can see down here from Igo's everywhere.

Q. Will you describe the permanent water inside of Mr. Roskruge's black lines on that map; point out the permanent water on that map in that country.

A. Well, there is permanent water at Campini's first ranch—that is, his old ranch; permanent water at La Noria; permanent water in the Santa Cruz River; permanent water in Parker's Canon; permanent water at Igo's place, cattle ranch, Rice's place, McCarthy's place, O'Donnell's place. There was more permanent water when I went there

than there is now. That is all on the east side; all I can recall unless you ask me.

Q. Well, now, on the west section, from the Santa Cruz River west?

485 A. There was permanent water when I went there at, I think, Cottonwood Canon.

Q. Is that on the road to Harshaw?

A. Yes, sir; about 2 miles on the other side of Harshaw; there is water in Harshaw Canon; there is water at Mowry—there was; I do not think there is now; in the Adams and Finley Gulch; there was permanent water at Washington Camp; permanent water at the yellow springs; yellow spring is in the Washington canon—Washington Gulch; there is permanent water at Mowry spring; that is on the other side of Washington Camp; there is permanent water in the Holland Gulch; permanent water there in the Duquesne mine; there is permanent water in the grasshopper spring; there is permanent water in the Adobe Gulch; there is permanent water in the San Antonio Pass, or there was.

Q. How about the water at Lochiel?

A. There is permanent water there; at La Noria, the same thing.

Q. How about water at La Zanja?

A. There is water there.

Q. How about water at the old Indian ruins?

A. There is no water there; no permanent water there now.

Q. Where do you go before you come to permanent water on the Santa Cruz?

A. About at Sheehy's; at Sheehy's there is plenty of springs.

Cross-examination by Mr. HENEY:

Q. What is the permanent water at Lochiel—I mean at La Noria; what is the character of it?

A. It is a great big spring.

Q. Is there a well at La Noria?

A. Yes, sir; several of them.

Q. Any one well that is particularly old?

A. No; I do not know of any well that is particularly old.

Q. What was there when you first went there?

486 A. Just about the same one as there is now.

Q. Whereabouts in the gulch that comes by the Duquesne mine is there permanent water?

A. Right straight up the same gulch.

Q. Where in the Washington Camp?

A. Just above in the trail leading from it; that is the last time I saw it.

Q. As you go up the valley from the San Rafael ranch, or after you get out of the valley—out by the old ruins and up on the mesa—do you see a very prominent red mountain off here to the northwest here towards the Sonoite Valley?

A. I do not know; there is a hill over here to the left; it don't draw my attention so much as the Penasco.

Q. How many years did you live out in that country?

A. 13 years.

Q. Do you know a ridge of red mountains out towards the Sonoite?

A. There is a ridge along about there opposite Cottonwood Wells about 4 miles from Harshaw; that mountain is to the left as you go down by the red hill.

Q. As you go up the mesa, don't you observe a sharp, high, rocky peak that appears after you get on the mesa west of the La Zanja?

A. I do not recall any high mountain except the Penasco; there are lots of hills there.

Q. I show you Plaintiffs' Exhibit F 26; that is a photograph taken from the old Indian ruins, that they call them; we call Old San Rafael; that is just about east of La Zanja; do you know where that place is?

A. Yes, sir.

Q. Looking towards the east, that is towards the Huachuca Mountains?

A. Yes, sir.

Q. The high range to the back there of the photograph are the Huachuca; this first the Canelo Hills?

A. Yes, sir.

487 Q. Where on that photograph does the Potrero Canada—where on that photograph is the end of the Canelo Hills?

A. I could not tell you; I judge it comes up along in there; it must come in between that and Campini's Canon.

Q. Where is Tanner's Pass?

A. I think that is it; I do not know; that looks like it more than anything on there.

Q. Indicate it by letters.

A. C for Tanner's Pass; O for the end of the Canelo Hills.

Q. Do you own any mines within this claim, inside of this grant?

A. I have an interest in mines.

Q. What mines are these?

A. Eller No. 2.

Q. Is that one of the Pool group?

A. Yes, sir.

Q. You still own it?

A. Yes, sir.

Q. Whereabouts is that located?

A. It is located right on the north of Baldy, Washington Camp.

Q. And your father is still living with his family at Lochiel?

A. He never lived there; he lives in Washington City.

Q. Your father-in-law lives in Lochiel with his family?

A. Yes, sir.

Redirect examination by Mr. POPE:

Q. How many of these water sources that you have mentioned as permanent lie within that section of this map south of Washington Camp, south of a line running west from the center monument to El Caloso, to the west center monument, and west of the Santa Cruz River south of Washington Camp—what are these?

A. The Adams and Finley gulch, the Washington spring, the Eller spring, the Browry spring, the Holland spring, water above Duquesne on the Duquesne Gulch, the head of the Adobe Gulch, the Grasshopper spring on the trail leading from San Antonio Pass.

488 Q. Do you mean this spring in here of Mr. De la Osas?

A. I believe he irrigates his field all the year.

Q. Is there any water in the Santa Cruz River in this dry section bounded on the east by a line from the center monument to the south center monument?

A. If this is the Santa Cruz River a straight line from here would leave the river to the west; yes, sir; there is water there; that is on the west, permanent water from Sheehy's down.

Q. Sheehy's place is at the place on this map marked Sheehy spring?

A. Yes, sir.

Q. And Callahan spring and Turtle spring are below that spring on the east side of the river?

A. Yes, sir; if that is the river indicated by this black line here; a line from this center monument to the south center monument—the Santa Cruz River would lie to the west side.

Q. Would a line drawn through these old Indian ruins to the mouth of the Potrero on the east side of the river—where does the river flow with respect to such a line actually on the ground?

A. It would be very close; it seems like it would be on the west side of the line of course, but very close.

Q. Did you ever see at Collins' ranch or Campini's any monuments of stone?

A. No, sir; I never saw any monuments over there.

Q. When did you locate these mines that you hold in Washington Camp?

A. It is some ten or 12 years ago.

Q. Have you been holding them ever since?

A. Yes, sir.

Q. You have done the assessment work on them?

A. Yes, sir.

Recross-examination by Mr. HENEY.

Q. From that list of springs, you do not mean to say that list is all the springs around for cattle to water from?

A. No, sir.

489 Q. You said when you first went there there was more water than there is now?

A. Yes, sir.

Q. Mention some.

A. Adams and Finley Spring is completely tramped under the ground; when I first went there it was a spring; the cattle tramped them out; they tramped them under the ground; there is a spring on the road leading from Carr's to Campini's place, Parker Cañon road; there is a spring at Tuly's.

Q. There are a large number of springs west of Mr. Cameron's San Rafael ranch, are there not?

A. Yes, sir.

Q. From Washington Camp, about how far is that from this place we call the old San Rafael ruins?

A. You mean down at Mr. Cameron's ranch, the old Enriques place? It is 5 miles from La Noria or Lochiel to Washington Camp; I suppose

it is about the same distance from Mr. Cameron's ranch; I do not think it much over.

Q. Mr. Cameron's ranch is more than a mile west of Enriquez place, is it not?

A. No, sir; out northwest.

Q. It is about west?

A. It is right at the corner of his pasture; it is about a mile; something like that.

Q. Right at the corner of his place as you go down the Santa Cruz River?

A. Yes, sir.

Q. From Washington Camp to Enriquez place is about 6 miles?

A. I do not know; it would be probably 5½; I am just guessing.

Mr. POPE:

Q. How far is it from where you live to the Santa Cruz River?

A. Where I live you know the river makes a bend; we live about 2 miles; probably a little more.

Q. And how far is it from De la Osa?

A. The same distance as my place; that is, to the bottom of the river.

490 ANTONIO DE LA OSA, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?

A. Antonio de la Osa.

Q. Where do you live?

A. In Lochiel.

Q. How long have you lived there?

A. Since the year '80.

Q. What has been your business there?

A. My occupation is butcher and I also have cattle.

Q. Have you had occasion to pass over that country in your cattle business?

A. Yes, sir; very often.

Q. Are you acquainted with what is known in that section of the country as the Penasco?

A. Yes, sir.

Q. How long have you known it by that name?

A. Since I have lived at that place; since '80.

Q. From whom did you learn it by that name?

A. Of the old people of Santa Cruz.

Q. What did the people living there around Lochiel call it when you went there, this peak that you spoke of as the Penasco?

A. I have never known it as otherwise than the Penasco.

Q. You have heard what has been described by witnesses for the claimants as the Saddle Mountain?

A. I have never heard that name until now at this court.

Q. What have you always known what they call the Saddle Mountain as?

A. As the Penasco.

Q. Can you see that Penasco from down the valley?

A. It is to be seen from all the lands.

Q. Can it be seen from the high places after you get below over in Mexico?

A. Yes, sir.

491 Q. How does it stand with respect to this Santa Cruz Valley, looking north? Describe it?

A. The Penasco is on the upper side of the valley; that is where the valley ends.

Q. Is this Penasco on the watershed?

A. I have never been there; I do not know if there are watersheds, but it is almost at the valley of the San Rafael.

Q. What is this watershed between that you say the Saddle Mountain is near?

A. From the San Rafael de la Zanja; that is the place where the watersheds go.

Q. And how does the water on the other side run?

A. It runs to the Santa Cruz.

Q. Now, how does the water on the other side run—toward the north?

A. I do not know.

Q. Have you ever been out to the Sonoite River?

A. Yes, sir; I have traveled that way.

Q. Have you ever been up there about where Cottonwood ranch is?

A. Yes, sir; it is near the road where you travel.

Q. When you first went down there, did you hear where the place of San Rafael was?

A. Not especially; I know that all the valley is San Rafael.

Q. Did you hear of any point called San Rafael?

A. No, sir; all the valley.

Q. Do you know any ruins up about a mile north of the international boundary line?

A. There are many ruins; I do not know if they are Indian or other kind of ruins.

Q. I am speaking of some on the west side of the Santa Cruz River, just about east of Mr. Cameron's house.

A. Yes, sir.

Q. Do you know those ruins?

A. Yes, sir.

492 Q. What were they called when you went there?

A. San Rafael.

Q. What are they called now?

A. San Rafael; I do not know any other name; that is, that I can remember.

Q. Do you know where the old Slavens place is?

A. Yes, sir.

Q. How long have you known that?

A. Since '80; since the time I came here.

Q. Do you know a mesa on the east side of the river, about half a mile south of that Slavens place?

A. Yes, sir.

Q. Do you know a place there where some old ruins are claimed to be?

A. I do not remember about those ruins.

Q. Do you know a pile of stones that there is there now on the edge of the mesa?

A. I have never seen them.

Q. Did you ever hear any place such as this south of the Slavens place and on the east side of the river called San Rafael, old San Rafael?

A. No, sir.

Q. Do you know where Mr. Igo's place is?

A. Yes, sir.

Q. When were you first over in that section of the country?

A. I was there about the year '81; that was about a year after I came there.

Q. Do you know where the wagon road is over there?

A. Yes, sir.

Q. You knew the wagon road about '81 of that period?

A. Yes, sir.

Q. To what extent did you pass along that wagon road?

A. At that time I passed to the Huachuca Fort.

Q. To what extent?

A. I do not remember how many times, but at that time I think it was two or three times.

Q. Do you remember when Mr. Cameron came into that country?

A. I do not remember positively when he came.

Q. You remember the time when he came?

A. Yes, sir.

Q. Had you been over in that section near Mr. Igo's to any
493 extent before he came in?

A. Yes, sir.

Q. You were engaged in the cattle business, I believe, were you?

A. I began the business then.

Q. Did you have occasion to ride over there in connection with your cattle business at any time then?

A. Yes, sir; very often.

Q. Have you seen a monument of stone, which is near or in the wagon road now, and east of Mr. Igo's place, half a mile or mile?

A. You mean have I seen it now?

Q. Yes, sir?

A. Yes, sir; I have seen it now.

Q. When did you first see it; about what year, more or less?

A. I do not remember the date.

Q. Did you ever see it before that time?

A. No.

Q. Do you know where the Salcito spring is?

A. Yes, sir; I know a place that we call Old Salcito.

Q. Where is that?

A. It is near—below the house of Mr. Cameron.

Q. On which side of the San Rafael River?

A. I think it is to the west.

Q. And how far from the river, about?

A. About three-quarters of a mile or one mile.

Q. Enclosed in Mr. Cameron's pasture now, is it?

A. It is within the fence.

Q. When you first went there, what was this Salcito, as to being a spring or not?

A. Yes; there was water there, sometimes flowing.
Q. As far as the Santa Cruz River?
A. Yes, sir.
Q. Was that permanent water the year around?
A. At that time it was permanent water; I do not know at the present time.

Q. What as to the amount of water then in that country as
494 compared to the water now?

A. I do not know how much water there is now; for some time I have not been there; at that time, when I came, there was plenty of water in the Rio Santa Cruz.
Q. Where?
A. From the place called Sheehy's place to the monument.
Q. How far below?
A. About a mile below.
Q. Below the international boundary line monument?
A. Yes, sir.
Q. And how above that, as to there being any—above Sheehy's place?
A. Yes; there is a sienaga at the place where they live.
Q. When you first went there in '80, how about the amount of water then compared with what is there now?
A. I think it is less—about half less.
Q. Is that valley muddy, so that you could not traverse it?
A. It was very muddy; it was watery.
Q. Is there a water source at your place?
A. Yes, sir; there is permanent water there almost all the time; it does not run, but there is water.
Q. Do you live at Lochiel?
A. Yes, sir.
Q. Live north of the international boundary line?
A. Yes, sir.
Q. The post-office at Lochiel is at your house, is it not?
A. Yes, sir.
Q. This water source that you say is at your house, do you irrigate from it?
A. There is enough for irrigation, but it is not necessary; the water is to the surface, almost.
Q. What do you use it for?
A. For planting some vegetables and some corn.
Q. And you use this water in connection with your planting, then?
A. Yes, sir; times when there is plenty I use it; there is a lake that gets full, and when it is full I use it.

495 Q. How does the lake get the water, from this source?
A. No; rain water, and also with water from the spring.

Cross-examination by Mr. HENEY:

Q. Where did you come from to La Noria?
A. From Los Angeles.
Q. You had not been in Arizona before '80, had you?
A. No.
Q. This water that is at your place, how did you develop that?
A. It is a natural water.

Q. Did you get it by scraping off the surface of the ground?

A. No, sir; I have not worked it at all; have not scraped it off since I have been there.

Q. When did you first occupy that place?

A. About a year after I got to that place, more or less.

Q. A man had been living there before you were?

A. Yes, sir.

Q. You found water in that immediate vicinity at a depth of two or three feet, did you?

A. From the place where I live below water is 3 feet below the ground.

Q. And all along where this place is you call the spring, is the surface of the ground even with the road that has been run along the edge of it?

A. Yes, sir.

Q. At what point in the valley is it that you say it was muddy—that was very wet?

A. From Sheehy's place, all that valley is a meadow.

Q. There is water now all the way down in the Santa Cruz from Sheehy's place to the boundary, is there not?

A. No, sir; there are portions of it that are dry, and further below it comes up again.

Q. Did you go to Fort Huachuca at any time between '83 and '96 by way of the road that runs by Igo's?

A. Yes, sir; I recollect having gone there various times
496 between these dates; I can not say the date, but I have been there several times.

Q. Did you ever go along that road between '83 and '96?

A. Yes, sir.

Q. More than once?

A. Yes, sir.

Q. Were not people living in Enriquez place when you first went there in '80?

A. I do not remember if there were any people there at that time.

Q. The houses were in good condition, were they not, then?

A. When I knew that place Enriquez was living there with his family.

Q. And the houses were in good condition, were they not?

A. No; they were not in very good condition, but they were habitable.

Q. You run your cattle now, do you not, between the mouth of the Canada of the Potrero and the place called La Zanja, in the Santa Cruz Valley?

A. No.

Q. Where do you run your cattle?

A. I have cattle at the San Antonio Pass; over several places, scattered about.

Q. Don't they run up at the Santa Cruz Valley?

A. Yes; they are all scattered.

Q. How many have you got?

A. All my cattle is between 250 and 300 head.

Mr. POPE:

Q. You claim an interest in this grant?

A. Yes; I bought a right from the people of Santa Cruz.

Q. How many years ago was it when you first saw this monument near Mr. Igo's?

A. I do not remember; I think it is about two or three years; about that, I saw it when I was passing by it first.

Mr. HENEY:

Q. Is it because of your interest in this grant that you are here testifying so strongly in favor of the grant?

A. I have to say the truth, even if it is against me.

497 Q. Who brought you up here?

A. The Government court.

Q. Were you summoned to come in?

A. Yes, sir.

Q. As a defendant in the case?

A. I do not know; as a witness I came here.

Q. Have you an attorney representing you in this case?

A. No.

Q. Is the Government paying your expenses for being in here?

A. Yes, sir.

DAVID ALLEN, recalled for further direct testimony by the Government by Mr. Pope:

Q. You testified this morning in this case?

A. Yes, sir.

Q. Your testimony as to the location of this red hill that Mr. Green showed you with respect to Harshaw, did you testify this morning as to where it was located with respect to Harshaw?

A. Yes, sir.

Q. Can you describe to the court its location?

A. This red hill is southwest of the penasco; it is almost a little south of west.

Q. And who showed you that hill?

A. Mr. A. A. Green.

Q. Where is that with respect to Harshaw?

A. It is north.

Q. North and east?

A. Yes, sir.

Q. Have you a little plat showing the location of these objects as you understand them?

A. Yes, sir; the way I have always stated.

Q. Does that place correctly locate these objects as you understand them?

A. Yes, sir.

Q. And as stated to you by Mr. Green?

A. Yes, sir.

Q. It correctly indicates Washington Camp also?

A. Yes, sir.

Q. And Lochiel?

A. Yes, sir.

Q. By penasco you mean Saddle Mountain marked on this map [Plaintiffs' Exhibit F 52]?

A. Yes, sir; I never knew it by the name of Saddle Mountain at all.

498 (We offer this plat in evidence marked "Defendant's Exhibit No. 7.")

Q. Have you ever been up to the upper part of the Santa Cruz Valley right there near the Canelo Hills?

A. Yes, sir.

Q. When you get up there on this high ground and look across toward the west can you or not see this red hill which you spoke of?

A. No, sir; I do not think I can.

Cross-examination by Mr. HENEY:

Q. Who made this sketch for you?

A. I made it, and then had a plain copy made of it. Here is my old one.

Q. You made this one yourself?

A. Yes, sir.

Q. Did Mr. Flipper make this for you?

A. Yes, sir; Mr. Flipper marked it for me.

Mr. POPE:

Q. This is the sketch map you made yourself?

A. Yes, sir.

(We offer this in evidence, marked "Defendant's Exhibit No. 8.")

Mr. BARNES. We make profe't of United States patent to the Harshaw mine known as the Bluff mine, situated in Harshaw mining district, dated November 14, 1883, Pima County, Arizona, together with a map of the claim, recorded on the 4th day of December, 1885. I do not want to file them. I will substitute copies later. I now make profert of United States patent to the Harshaw Mining Company of the Hermos mine, November 14, 1883, Harshaw mining district, Pima County, Arizona, and a map of the claim, and recorded on the 4th day of December, 1885. I also make profert of a United States patent to the Salvador lode mining claim, Harshaw mining district, Pima County, Arizona, issued on the 11th of June, 1886. Also make profert of a deed from the receiver of the Harshaw Mining Company, William M. Olmstead, to James Finley.

499 GAVINO ARRIGA, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. How old are you?

A. I am 60 years old.

Q. Where do you live?

A. In San Lazaro.

Q. Is that a part of Santa Cruz?

A. Yes, sir; it is in the jurisdiction of Santa Cruz.

Q. Is it within the ejidos of Santa Cruz?

A. Yes, sir.

Q. Where were you born?

A. In San Lazaro.

Q. How far is that from Santa Cruz?

A. It may be 3 leagues.

Q. To what extent have you been in Santa Cruz and know the people there?

A. That is my country; I must know it.

Q. Are you interested in this tract of land that is now in controversy before this court?

A. I have the interest of Santa Cruz, because I am a resident of Santa Cruz.

Q. Do you help pay taxes on the grant?

A. Yes, sir.

Q. In behalf of some of the neighbors or all of them?

A. I pay for myself and on behalf of some of the neighbors also.

Q. Did you ever live inside of this grant?

A. Yes, sir.

Q. Where did you live?

A. At the place that is called Mesquita.

Q. That is within the boundaries of this grant as claimed, is it?

A. Yes, sir.

Q. Where is it with respect to the Santa Cruz Valley?

A. It is in the valley; it is on the river itself, at the edge of the valley.

Q. Do you know where Mr. Slaven's place is or used to be?

A. Yes, sir.

Q. How far is it from there and in what direction?

A. It is on the right hand, down the river from Slaven's place.

Q. How close is it from the international boundary line?

500 A. I have not measured it, but it must be about 2 miles.

Q. How long did you live there?

A. I lived very little with my family there, but I had to settle on it for about 4 years.

Q. How long did you live there without your family?

A. I had settled on it, I have said, for about 4 years.

Q. What was your business there?

A. I had a ranch and cattle.

Q. While you were at Santa Cruz, or while you lived on this ranch, at any time have you ever heard what the boundaries of this tract were?

A. What boundaries do you mean?

Q. The boundaries of this tract as now claimed—the San Rafael de la Zanja grant.

A. No; I never heard about them, nor did I know them.

Q. When you lived at Santa Cruz did you ever hear what they were, or anything about them?

A. I know of no other boundary on the lines of the town except the Potrero.

Q. Are the boundaries of this tract generally known there at Santa Cruz?

A. Perhaps there may be some who know them.

Q. While you lived in that country did you ever hear of the Sierra del Cobre?

A. No, sir.

Q. Do you know that mountain that runs up there and ends just a little distance from Mr. Igo's?

A. Yes, sir.
Q. What has that always been called by the people of Santa Cruz?
A. Huachuca.
Q. Did you ever hear that spring at is there at Mr. Igo's called the Carricillo spring?
A. No, sir.
Q. Did you ever hear it called the Carricito spring?
A. No, sir.
Q. Did you ever hear of any Carricito spring in that country at all?
501 A. No, sir.
Q. Do you know where what is known as the Penasco is?
A. Yes, sir.
Q. How long have you known that Penasco?
A. Ever since I saw it.
Q. When did you first see it? How old were you?
A. I was perhaps 14 or 15 years old.
Q. What is the Penasco? Describe it to the court.
A. It is along there in the valley of the Santa Cruz where the valley ends and the waters come together and come towards the Santa Cruz in the valley of the Sonoite. That is the place of the Penasco.
Q. Do I understand that the Penasco is on the divide between the Santa Cruz and the Sonoite waters?
A. Yes, sir; it is there.
Q. Have you heard what has been described here by the witnesses as the Saddle Mountain?
A. As I do not understand English I do not know what they did call it.
Q. Have you heard it called Saddle Mountain since you have been out there, or since you came to the age of reason?
A. No, sir.
Q. Have you ever heard of any Saddle Mountain in this San Rafael country?
A. No, sir.
Q. What is that mountain that stands there on the divide between these two valleys always been called, to your knowledge?
A. That is the Penasco. There is no other mountain.
Q. That is called the Penasco?
A. Yes, sir.
Q. Can you see that Penasco from the Santa Cruz Valley, going up?
A. It can not be seen on the road of Santa Cruz, but it can be seen by the side of the road over the hills, because Santa Cruz is very far below.
Q. How far can it be seen?
A. It can be seen from the high points at Santa Cruz.
502 Q. The town of Santa Cruz?
A. No; not from the town. The town is very far below.
Q. From the neighborhood of the Potrero Canada, where it comes down, can you see it from the high places there?
A. Yes, sir.
Q. And as you go up the valley towards Mr. Slaven's old place, can you see it there?

A. Yes, sir.

Q. Do you know below Mr. Slaven's place, about a mile on the east side of the river, some ruins on a mesa?

A. What kind of ruins?

Q. Do you know a mesa there on the east side of the river, about a mile south of Slaven's place?

A. There are many mesas there, because I call mesas anything—high land that divides lower lands, and there are plenty of that description there.

Q. Did you ever hear of any Indian ruins there below Mr. Slaven's?

A. I have not heard anything, but I myself have seen a good many ruins.

Q. Are they Indian ruins, or Mexican ruins, or French ruins?

A. There are ruins there.

Q. Have you seen some on the Santa Cruz River about a mile below Mr. Slaven's and on the side of the road towards the Huachuca Mountains?

A. Yes, sir.

Q. How long have you known that place?

A. More than 40 years.

Q. When you lived there did you know that place?

A. Yes, sir.

Q. Have you ever been to it?

A. I have certainly gone there. I have not gone there as frequently as I have been here.

Q. Did you go there a few times or many times?

A. Many times.

Q. Was there any pile of stones on the edge of that mesa? Did you see any?

A. I did not pay attention.

Q. Did you ever see any there?

A. No, sir; I did not pay attention.

503 Q. Did you ever hear that place that you have described, about a mile below Mr. Slaven's, on the east side of the river, called Old San Rafael?

A. No, sir.

Q. What did the people of Santa Cruz say as to who had ever lived there?

A. They did not say anything.

Q. Did you ever hear it stated that the people of Santa Cruz, or some of the people of Santa Cruz, had lived there themselves?

A. No, sir; nobody.

Q. Do you know where a Salcito spring is?

A. Yes, sir.

Q. Did you know that when you first went there?

A. Yes, sir; I knew it—I knew it when I went there—that very day.

Q. Was there water there?

A. Yes, sir.

Q. To what extent was there water there?

A. There was something of a pool there—a large tank.

Q. Was the water permanent?

A. It was permanent; I guess it is there.

Q. What side of the river is that on?

A. The side towards Lochiel, towards the mountains, the Patagonia Mountains; but that is in the valley.

Q. How far is it from the river?

A. That is about 2 miles or more.

Q. Did you ever hear of any copper out in these Huachuca Mountains?

A. Yes, sir.

Q. Did you ever hear of any copper out there in early date or not?

A. Yes, sir; I heard that there was some.

Q. At what point did you understand there was copper?

A. What we used to call there the Pass Muchachita, and there are some draws there up to the place where Mr. Campini lives and below the place; there was some copper over towards Muchachita.

504 Q. Where is Muchachita Pass; through what does it go?

A. It comes out to a draw that is at a place where an old man used to live—I believe his name was Cahn—and that place we call Muchachita Pass.

Q. Is that a pass in the Canelo Hills?

A. It is on the same range that comes from the Canelo, and strikes the Huachuca Mountains, and over there down to where Mr. Campini lives now.

Q. You say there is copper found there?

A. No, sir; it is very far up; but the drain comes to that draw.

Q. Do you know where Mr. Campini's mine is now?

A. Yes, sir.

Q. Did you ever hear of copper being found there in early days—olden times?

A. From that place below is where they found it.

Q. Did you ever hear of the copper of the bells of Santa Cruz being found there?

A. Yes; I heard it stated that they had taken out some pieces of copper there, but not for the bells.

Q. Well, for any of them?

A. I do not know. When I was born I suppose the bells were already made.

Q. Did the old people talk about it?

A. Yes, sir.

Q. What did they say about it?

A. I heard from the old people that they had pieces of copper from there.

Q. From where; from what place?

A. From Mr. Campini's mine below; not from the mine itself, but from the section of country below there; they found it scattered about and in ledges.

Q. Did you ever hear of copper being found up at Mr. Igo's place or around there?

A. No, sir.

Q. This copper you spoke of was found at Mr. Campini's place down below, was it?

A. Yes, sir.

Q. When you lived in that country was there less water than there is now, or more, in the Santa Cruz Valley?

A. There was more then.

505 Q. What as to there being cienagas in the valley of the Santa Cruz?

A. There were cienagas all around the valley.

Q. How far do these cienagas extend up the valley?

A. There were cienagas coming from beyond the road where it comes in the Canelo Pass and coming down the valley from there to Slaven's place. There were some then; there are none now.

Q. Were there cienagas at Mr. Slaven's place and from there down?

A. There are none now.

Q. I mean when you first saw that country.

A. There were then cienagas.

Q. And as to water running over there or being there the year around?

A. Yes; water ran all the year.

Cross-examination by Mr. HEXEY:

Q. You were living on the San Rafael in May, '80, were you not?

A. I do not remember the year I lived there.

Q. Do you remember a man named Allis who came out there and made a survey for the United States Government?

A. No, sir.

Q. Do you remember anybody surveying out there while you were living there and putting up a stake at La Zanja?

A. No, sir.

Q. You paid taxes on that grant while you were living there, did you not?

A. Yes, sir; I paid taxes.

Q. What years did you pay taxes in?

A. I do not remember; but there must be some record of that here in books, because I paid them here.

Q. What year did you move off of the ranch?

A. I went away about over 20 years ago.

Q. Did you pay taxes on that ranch in '74, 5, and 6?

A. I say that I cannot remember; but I said that there must be some record here, because I paid taxes here; and I also have receipts at home, and from that I would be able to tell you when I paid; but I cannot recollect now.

506 Q. Were these taxes paid on the San Rafael de la Zanja grant?

A. Yes, sir.

Q. Who joined with you in paying them?

A. I do not remember now, but all the people, all the inhabitants, paid taxes for some years.

Q. Was Slavens living there at that time?

A. No, sir.

Q. Was Enriquez living there at that time?

A. No, sir.

Q. Who did you send the money to in Tucson to pay the taxes?

A. The officers in Tucson themselves received it.

Q. Who brought the money in?

A. There was a committee sent from Santa Cruz to pay the taxes here.

Q. Who was the agent of the Santa Cruz people in Tucson at that time?

A. There was no agent here.

Q. Do you know Samuel Hughes of this town?
A. Yes, sir.
Q. Did you and other owners of that grant lease Mr. Hughes ground surrounding the Hermosa mine in 1887?
A. Yes; he has a deed.
Q. To what?
A. He has the Durasno tract rented; I do not know how they collect the money.
Q. Was that at Harshaw?
A. Yes, sir.
Q. Where is Harshaw?
A. Harshaw is at the place where Dave Harshaw had the Trench mine; that is the place called Durasno.
Q. And you leased that ground to him at that time did you?
A. Yes, sir.
Q. That was in 1878, was it not?
A. I do not know; I do not know what year.
Q. That was a lease for 20 years, was it not?
A. I do not know if it is for 20 or for 40; I can say by referring to the documents.
Q. Who was that lease given by?
A. The people of Santa Cruz.
507 Q. Including yourself?
A. Yes, sir.
Q. Were there any other miners in the vicinity of Harshaw, in the vicinity of that French mine at that time, at Durasno?
A. Yes, there was.
Q. Who were they?
A. I do not know them.
Q. How many?
A. I do not know how many.
Q. Do you know where the El Caloso is?
A. No, sir.
Q. Do you know where Washington Hill is?
A. I do not know where Washington Hill is.
Q. Do you know where there is a high hill with lime top is?
A. I know all the hills up there, but not by these names they are called now; I know them by other names; I do not know which one it is unless I went there and looked at it.
Q. Do you recognize that?
A. I see that photograph there, but I do not know what mountain that is because it is really a dim matter for me.
Q. All the people of Santa Cruz call that spring up there at Igo's El Carricito, do they not?
A. Yes, sir; all the old people that I know; I know some of the old people who settled Santa Cruz.
Q. What did they call the mountains south of the place where Campini's place is?
A. What do you mean by below?
Q. The range of mountains running from there south where you say you found the copper.

A. Mr. Campini lives in the Huachuca range all the way around where they found the copper.

Q. Do you know any little spring called Huachuca?

A. That is the name by which I have always known it.

Q. What little spring?

A. There is a little spring opposite San Pedro, towar's to the side of San Pedro.

Q. From there up to the El Carricito spring, is that Huachucas?

508 A. Yes, sir; there is a place that divides them and other places also that had other names, but they do not have them now.

Q. Which had other names, the passes?

A. Yes, sir.

Q. Is there a pass where Campini lives; is there not?

A. It is near the place where Campini lives.

Q. Do you know a high red mountain that is northwest of the place you call the Penasco, where the road runs down around the Sonoite Valley?

A. I do not know what northwest is; I know all the mountains standing on one side or the other of the mountains; I can give you the places; I do not know northeast or northwest.

Q. In going from La Noria to Casa Blanca do you know a big red mountain on your left-hand side just before you get into the Sonoite Valley; do you know a big red mountain north of Durasno going from San Antonio Pass in that range at the north of the range; do you know a big red mountain down in the valley of the Sonoite?

A. I know of several red mountains.

Q. Standing on the mesa where the canada of the Potrero comes in the Santa Cruz Valley, did you say you could see the Penasco, red penasco?

A. Yes, sir; not at the bottom; you can not see it from the bottom, but you can see it from the point there that is sufficiently high.

Q. Can you see a big red mountain beyond that?

A. Yes, sir; I have said that the mountains can be seen from that place.

Q. Can you see a big red mountain beyond that?

A. I do not know what mountain it is; I have said there are several red mountains, but I do not know what one in particular you mean unless you point it out to me.

Q. What is the name of that range of hills running from the San Antonio Pass north to Casa Blanca?

509 A. You mean hills or mountains; you want me to give you the names that I know, the old names? It begins with San Antonio; from San Antonio it goes to Plomosa Pass, and from there to Patagonia, and I do not remember how many other names, places I can not recall.

Q. You say that whole range running north they call the Plomosa?

A. Yes, sir; it has various other names.

Q. From the San Antonio Pass to the edge of the mountains where you come to Casa Blanca was called El Plomosa?

A. Yes, sir; but this mountain had also other names.

Q. Is there a red mountain where you go down to Casa Blanca?

A. There are red mountains where the road comes down to the left everywhere, and also to the right side towards the Penasco.

Q. It is on the extreme end of that range of mountains where you go down to the Casa Blanca—a red mountain?

A. There are several.

Q. Can you see that big red mountain at the extreme end of that range of mountains where you go down to Casa Blanca; is there not a red mountain there?

A. There is a portion that is all red; it is not a single red peak, but a portion of it is all red. There is no place that stands by itself alone, but I might call that cerro colorado as I would call the Penasco; that place stands by itself.

Q. How long is it since you have been in the San Rafael Valley?

A. I have said since I was 15 years old to this date.

Q. When was the last time that you were up in the San Rafael Valley?

A. I traveled over it in coming to this point in a wagon.

Q. When was the last time you were there before?

A. I do not remember.

Q. It was a long time ago?

A. No; it is not a long time ago.

510 Q. Is it a long time since you have ridden over that on horseback?

A. No, sir; it is not very long.

Q. Well, how long has it been?

A. I think that it is not 2 months ago that I was there.

Q. You were riding over the valley on horseback?

A. Yes, sir.

Q. Did you go to these different places where there used to be water?

A. I passed by that place; I came from that way now.

Q. Where were you going?

A. I was coming this way, to this point, over the place where there used to be water.

Q. You are living now about 8 miles below Santa Cruz, do you not?

A. I do not know how many miles; I have said it is about 3 leagues.

Q. How long have you been living there?

A. I was born there.

Q. You have been living there ever since you were born?

A. No; because the Apaches did not allow me to live there when they were coming down; we went back to live there.

Q. How long have you been living there this time?

A. It is 24 or 25 years that I lived there.

Q. Since you left the San Rafael Valley you have had occasion to ride there for cattle, have you? Did you ride there for cattle on the San Rafael ranch?

A. I did not go there, but I come over that place whenever I feel like it.

Q. You have not been riding for cattle there for 15 years, have you?

A. No, sir; I come to the round ups, or send the cowboys.

Q. You have not been on the San Rafael ranch yourself for ten years, have you?

A. I was there in October and November of last year. I was not

at the round-up, but I was there at the time they were hunting the cattle.

511 Q. At the time the cowboys were at the round ups, how long did you remain there; did you ride the range any?

A. I was there about 3 or 4 days over the ranches.

Q. And that is all the knowledge you have that the water there now is less than it was when you first went there?

A. I do not know what other knowledge you want me to get.

Q. You have been on the ranch there but that once to ride over it, have you, in ten years?

A. No, sir; I have been many times.

Q. Simply riding along the road?

A. Traveling on horseback or in a carriage or in a wagon as ever I please, along the road, on the road, and over the hills outside of the road.

Q. And over how many roads were you and what were you doing over the hills?

A. On private business and going over the ranches of my neighbors on calls.

Q. When you first went there the water in these cienagas above Slavens did not stand the whole year around did it?

A. I knew the cienaga at that time from the monument to a point below the road where the road comes opposite El Carricito, and I knew that to be a cienaga to such an extent that you could not cross from one side to the other except at one or two places, that is at la' *chcoes* and the Canelo Hills going to El Carricito.

Q. Where was the cienaga which you talked about which you could not cross?

A. It was in the valley of the Santa Cruz, in the San Rafael Valley.

Q. Where was it from Slavens' place?

A. That is where Mr. Slavens' place is, or ranch is, above it was the cienaga; that place is on the las coches and it was a very big marsh and you could not cross it except at one or two places.

512 Q. Was that the whole year around?

A. Always.

Q. Have you been up there lately?

A. I traveled over that way now.

Q. When were you there the last time?

A. I crossed over that place in coming from my home here.

Q. Any cienaga there now?

A. No, sir; there is nothing there.

Q. When was the first time that you heard of copper being found in the Huachuca Mountains?

A. When I was able to understand things, at the age of reason.

Q. When was the first time that you heard of copper being found in the Puerto de la Silesas?

A. I heard that this copper was found at the Los Muchachitas.

Q. When was the first time that you heard copper was found there?

A. I have said that ever since I began to hear people talk.

Q. There was no mine ever worked there?

A. No, sir; there was none on the mine; there is no mine there; there is no placer there.

Q. Is there a mine at Campini's?
A. There may be there now but there was none then.
Q. When was the first time you heard of copper being worked anywhere in the Huachuca Mountains?
A. I do not know.
Q. That was the last mine over there that they used to talk about in Santa Cruz?
A. Perhaps that was but I have never seen it.
Q. Did you hear about it?
A. No, sir.
Mr. Pope: Q. Is there a pass called Muchachita Pass?
A. There is a road that divides the mountains there; it is the lowest point to drive trains to the valley of the San Rafael.
Q. From what other valley?
A. These trains come out of the Babocomari Valley; I do not know what you call it now; it comes to la' coches.
513 Q. Is that the Puerto de la Muchachita?
A. Yes, sir; that is what we called it formerly; I do not know what they call it now.

E. J. HAND, sworn on the part of the Government, testified upon direct examination by Mr. Pope, as follows:
Q. Where do you live?
A. West of the Huachucas.
Q. Where do you live with respect to the boundaries of this grant as claimed here?
A. As claimed here I suppose that I would be about 9 miles.
Q. Inside or outside of them?
A. I never was inside.
Q. How long have you lived down in that country permanently?
A. I went to live there permanently, I think, about '81 or '2.
Q. When was you first in that country?
A. In '75.
Q. What was your business in that country as to going over it to any extent?
A. Prospecting.
Q. To what extent did you prospect?
A. Well, to quite an extent as a miner, mining for placers.
Q. Did you ever ride the range of this country down there?
A. Yes, sir.
Q. Did you ever range cattle down there?
A. Yes, sir.
Q. Were you by reason of this occupation there or not familiar with the natural objects out in that country?
A. To a certain extent.
Q. And you have been living there ever since, off and on since '81?
A. I lived, had a permanent residence in Huachuca.
Q. The place where you now live, how far is that from Huachuca?
A. Five or 6 miles northwest, not due west, a little north of west, I should think; I am not much familiar with the compass; more with the country than with the compass.

Q. Have you ever spent any time in the state of Sonora?
514 A. Yes, sir; a number of years.
Q. One or more than one; state approximately.
A. I could not state; two or three or four; I do not want to state positively.
Q. Do you know what is claimed as the center monument of this grant?
A. I believe I understand what they claim is the center monument.
Q. Do you know where the Slaven's place is?
A. Yes, sir.
Q. Do you know where the mesa is just down south there, a mile on the east side of the river?
A. Yes, sir.
Q. Do you know a monument of rock on the edge of that mesa?
A. I have seen a monument there.
Q. What sort of a monument is it?
A. It was not very large.
Q. Did you, after you went to that country, go to this section where that monument is now when you were first in the country?
A. I traveled in that way as a prospector; I traveled down towards Santa Cruz, down towards the southern end and foot of these Huachuca Mountains.
Q. To what extent were you at this place known as Slaven's place?
A. Just traveling over there several times.
Q. Did you have occasion to go to this, or right by this place where this monument is now?
A. I passed close, not right exactly where this monument is, but close up several times.
Q. When did you first see that monument there?
A. I should say about '84 or '5, I think.
Q. Was that monument there before that time?
A. Not to my knowledge.
Q. Do you know anything about a natural object out there called the Penasco?
A. Yes, sir.
Q. When did you first see that?
A. When I first came to the country.
Q. You have heard the testimony here as to the location of the
515 place that is called by the witnesses for the claimant's Saddle Mountain?
A. I have heard them make the remark.
Q. Do you see where Saddle Mountain is on that map?
A. I do not know anything about maps, the country I can tell you.
Q. Where is that Penasco with reference to this Saddle Mountain is claimed to be?
A. I call the Penasco the first mountain to the left as you go up the valley of the Santa Cruz.
Q. Where does that lie with respect to the divide between the Sonoite and the Santa Cruz?
A. The first mountain on the left hand side as you go up.
Q. Where is it with respect to the divide between these two water courses?

A. It is close to the divide.
Q. Is that Penasco visible from the Santa Cruz Valley?
A. Yes, sir.
Q. To what extent is it visible?
A. To a close extent.
Q. Where would it be looking from the Santa Cruz Valley as you go north?
A. It would be I should think northwest.
Q. Did you ever hear that called Saddle Mountain?
A. I heard it called here Saddle Mountain.
Q. When you first went there was it called Saddle Mountain by the people?
A. No, sir.
Q. From whom did you learn it was called the Penasco when you first went there?
A. From the old Mexicans.
Q. Where did these old Mexicans live?
A. In Santa Cruz.
Q. Did you ever hear any other penasco in that whole section of country called the Penasco?
A. Not that I know of.
Q. When you first went to that country did you hear or learn where the place San Rafael was located?
A. No, sir.
Q. Subsequently?
A. Yes, sir.
516 Q. Where did you learn it was located?
A. Well, I always understood it was located where Enriquez lived.
Q. How far is that from the international boundary line?
A. About 2 miles, I should think, or in that neighborhood.
Q. You say you always understood it was called by that name?
A. Yes, sir.
Q. From whom did you say you understood and learned it was so called?
A. From the people of Santa Cruz.
Q. Did you ever hear that called Old San Rafael?
A. Not until I heard it here.
Q. Do you know what it was considered?
A. Always considered ruins of an old ancient town of Indians.
Q. From whom did you learn that it was so considered?
A. From different people around in the country there.
Q. What people, for instance?
A. Mexicans living Santa Cruz or vicinity.
Q. Was there any settlement at La Noria when you first went to that country?
A. No, sir.
Q. Do you remember anything about the water in that country at that time, as to its being plentiful or otherwise in that Santa Cruz Valley in the neighborhood of Slaven's place and down south?
A. Plenty.

Q. What as to there being more water then as compared with what is there now?

A. More then than there is now.

Q. To what do you ascribe there being less water now than formerly?

A. By ditches being cut out and the water going into the bottom and also tramped out by the cattle.

Q. Do you know a spring there on the west side of the Santa Cruz River near this place you call the old San Rafael?

A. Yes, sir.

517 Q. How far is that spring from this place?

A. I could not say; it is inside of Mr. Cameron's pasture.

Q. Is that the place known as Salcito?

A. Yes, sir.

Q. What was the condition there as to water when you first went there?

A. There was quite a hole of water.

Q. What as to being permanent?

A. I believe it is permanent.

Q. For what was it used?

A. Used for house and stock, cattle and horses—horses principally.

Q. This section of country lying in a line drawn west from the center monument at these old Indian ruins to Washington Camp, and from that center monument to the mouth of the Potrero, what would you state as to that section of country having permanent water there at the time you were first there?

A. All that country had water; it has good water to-day; at Slaven's place there was a spring there and a cienaga, and there was a marshy place; there was times in the *eyar* when there was plenty of water and times when it went dry down below.

Q. What as to this Salcito spring being inside of this grant?

A. That Salcito spring is inside of the tract; I do not understand the signs on that map, but that is inside of Mr. Cameron's fence, and his place is under fence.

Q. That is on the west side of the valley, is it?

A. Yes, sir.

Q. It is inside of Mr. Cameron's home pasture?

A. Yes, sir.

Q. What as to there being permanent water south of Washington Camp to the international boundary line and San Antonio Pass?

A. From Washington Camp around in that section of country there is permanent water.

Q. What permanent water is there there?

518 A. Well, there is springs as you go across as you drive to the left side of the road—as you go to *to* Nogales—there is a spring there of permanent water; over at the Duquesne mines there is a spring; and what we call the "Grasshopper spring," there is water there—there is a good flow of water there and there is permanent water there.

Q. Was that permanent water when you went there?

A. Yes, sir.

Q. You have heard the testimony here about the east center monument

of this grant—a pile of stones out there on the edge—at the Potrero Canada, the east center?

A. Yes, sir.

Q. Have you ever seen that monument on the edge of the mesa beyond the Potrero—that east center monument?

Q. Yes, sir.

Q. When did you first see that monument?

A. I should say in '84, I think it was; along about '84 or '5—somewhere in there.

Q. Were you living near there at that time?

A. I was living within about 2 miles or three miles of it.

Q. Were you acquainted with that country before the time when you saw this monument on the edge of the mesa there?

A. Yes, sir.

Q. How many years had you been acquainted with it?

A. I had been living there since I came back from Sonora; I was living within 3 miles of it.

Q. Had you occasion to go there?

A. I was riding about every day.

Q. Was that monument there prior to '84?

A. Not to my knowledge.

Q. How does that mesa run with respect to this Canada del Potrero?

A. It runs about the same way the Potrero runs; it runs a little west of south.

Q. And for what distance does this Canada del Potrero run along the mesa east of it?

A. 12 or 15 miles; I do not know the distance, it is a long mesa.

Q. That mesa joins the Huachuca Mountains?

A. Yes, sir.

519 Q. And south how far does it run?

A. As far as that is concerned it will go down in Mexico.

Q. To what extent have you seen in that country monuments or piles of stones; how many?

A. Well, as to piles of stones they are found everywhere in that country.

Q. What kind of piles of stones; large, or how?

A. There was no large piles of stones until after these commenced to be built up. There was small piles of stones there; there are lots of them.

Q. On this mesa?

A. Some on that mesa and some on others around there in every direction.

Q. Do you know where the Canada del Potrero heads?

A. It heads at the divide of the Canelo Hills and Huachuca Mountains; the water goes both ways, you might say, over there.

Q. Do you know where Campini's mine is up in that country?

A. I do.

Q. Where does the Canada del Potrero head with respect to this mine?

A. It heads, I should say, probably in the neighborhood of three miles.

Q. Mr. Campini's mine is located at the end of the spur of the Huachucas?

A. Yes, sir.

Q. Where is this Canada with respect to that particular point; is it nearer the Huachuca Mountains or the Santa Cruz Valley?

A. It is nearer the Santa Cruz Valley. By the head I mean the place where it starts out of the mountains; where the draw passes down; where the water goes down.

Q. Where is Mr. Campini's mine with respect to this draw?

A. It is above, towards the Huachucas.

Q. Have you ever been to the place where Mr. Campini's mine is?

A. He has got more than one; I have not been to the mines
520 since he has opened them.

Q. Is there a spring there?

A. Yes, sir; three or four springs, I believe.

Q. Where does this spring lie with respect to the point of the Huachuca Mountains?

A. The one at Campini's lies at the spur of the Huachucas.

Q. Describe the Huachuca Mountains at that particular place. Is it a sloping or steep place?

A. It is sloping.

Q. Is there in that vicinity or any place near there bluffs of the Huachucas?

A. Yes, sir.

Q. Where is this spring of Mr. Campini's with respect to the trail in Tanner's Pass?

A. That cañon, of course, was there before Tanner's Pass was there; he did not come there until afterwards.

Q. What you call Tanner's Pass, is that the same as Silesas Pass?

A. No, sir; Silesas Pass is to the left more.

Q. Towards Igo's or down the other way?

A. Towards Igo's where the road comes down, formerly called the Muchachita Pass.

Q. Have you ever been to Mr. Collins' place?

A. Yes, sir.

Q. Where is that with respect to the Canelo Hills?

A. It is south of them; about the south end of them.

Q. Any spring there?

A. Yes, sir.

Q. Have you ever heard of any copper being found in that section of the country, right there?

A. Here at Campini's place; yes, sir.

Q. Is copper mined there now?

A. Yes, sir.

Q. Have you ever heard any tradition about the people of Santa Cruz as to copper being found by the Mexicans?

A. Yes, sir.

Q. Just where was that dug—exactly where it was?

A. Well, in the vicinity of where Mr. Campini has got his mines, in that vicinity.

Q. Did you ever hear of any copper mines there towards Mr. Igo's?

521 A. No, sir.

Q. When were you first where Mr. Igo now lives?
A. Along, I think, about '76.
Q. Any wagon road running up there then?
A. No, sir.
Q. Have you ever seen a monument of stones that is on the wagon road on the northeast corner of this grant?
A. Yes, sir.
Q. How large is it?
A. That is a small monument made of loose stones.
Q. When did you first see that?
A. I think about '84 or '5; I do not know exactly.
Q. Were you along that way before that?
A. Yes, sir.
Q. Was there a wagon road there before this monument was built?
A. No, sir.
Q. You say the wagon road was not there before you saw this monument?
A. No, sir; there was no wagon road there.
Q. When was the wagon road first there?
A. It was in the years I lived in Sonora.
Q. What years were they?
A. I can not tell.
Q. Prior to '84 or '5 had you been past where Mr. Igo lives?
A. Yes, sir; a few times. I was only there a few times.
Q. What do you mean by a few times?
A. I mean I can not say once, 2, 4, times or ten times.
Q. Had you passed there as many as ten times?
A. Yes, sir.
Q. In '84 was the first time you saw this monument that was built there?
A. Yes, sir.
Q. Prior to '84 there was no monument built there?
522 A. No, sir; not to my knowledge.
Q. Did you prospect up there at the end of the range?
A. I prospected in that range until about '86, principally for gold placers; I prospected in the Santa Ritas before that. I came from Mexico into the Huachucas.
Q. What was the first time you saw that monument up there?
A. I think, as I have said, about '84 or '5.
Q. Was there any monument there before that?
A. Not to my knowledge.
Q. Do you think you would have seen it if there had been one there?
A. I would naturally have seen it.
Q. Do you know what carricitos are?
A. Canes, small canes. I understand carricitos are what we call canes. They use it for putting on the roofs on their houses.
Q. Does it grow in moist places?
A. Springs; yes, sir.
Q. Are there any carricitos at this place of Mr. Igo's?
A. When I first knew that water there was none.
Q. Which was the highest as to elevation; the monument at Mr. Igo's or the spring there?

A. The spring.

Q. How does the road go around from the spring to the monument?

A. The road goes over a little ridge going towards Fort Huachuca on the edge of the hills of the Huachucas; the ridges slope down from the spring; the hills that way are lower.

Q. You say you spent some time down in Mexico?

A. Yes, sir.

Q. Did you, in Mexico, ever see the Penasco?

A. Yes, sir.

Q. Was it called by the Mexicans the Penasco?

A. Yes, sir.

Q. Do you know where Washington Hill is, near Washington Camp?

A. I know, I suppose, all the hills around there.

523 Q. Did you prospect out in that country?

A. Yes, sir; mining and prospecting both.

Q. Do you know that high hill there, right at Washington Camp, with the lime top?

A. Yes, sir.

Q. Is that the only lime hill in that Patagonian range of mountains?

A. No, sir, it is not; right west of Washington Camp, where the Washington mine is, there is a lime hill; that is called Lime Hill.

Q. What as to the range south of that, from there down south of that, towards the San Antonio Pass?

A. After you pass the Duquesne then it ends.

Q. This lime hill at Washington Camp—is it, or is it not, a high lime hill?

A. That is the highest one of the lime hills that I know of.

Q. How far south can you go and still find lime hills?

A. You can see from there, right from the hill itself, I suppose a mile and a half or so.

Cross-examination by Mr. HENEY:

Q. As you stand out in the valley or up on the mesa of the valley, anywhere along the San Rafael Valley, that lime hill at Washington Camp is very noticeable, prominent objects, is it not, standing on any of the hills in the valley?

A. Yes, sir.

Q. Anywhere in the valley, when you get on the mesa, you would see it at Washington Camp as a very prominent object?

A. It is a prominent object from the valley from most anywhere north.

Q. If anybody told you to go over to the lime hill, you would know very well what they meant, would you not?

A. If you want the highest and the most lime——

Q. Just confine yourself to my questions. If you went out in

524 the valley and you wanted to pick a hill over there at that distinct point as a lime hill, you would naturally pick that Washington Hill, would you not?

A. If I picked them as the highest hill I would pick the hill back of it for the high hill; that is the highest lime hill; I would pick right back of it.

Q. Where is this monument, this southeast monument, that you never saw there prior to '84? Whereabouts is it? Describe its exact location.

Q. It is in the La Bota ranch in Mexico.
Q. Whereabouts in La Bota?
A. South of the international boundary line.
Q. What is the character of the country around it?
A. There are cañons and springs all around on both sides.
Q. Do you know where the international boundary line monument is over in that direction?
A. I think I know pretty much all the international monuments.
Q. The first one coming from San Pedro to Nogales—do you know number 106?
A. I do not know what the numbers of any of them are.
Q. The one closest to the Cochise County line?
A. I do not know what its number is; I think it is on the line of Pima and Cochise counties; it is due south.
Q. In going south from that monument, do you go towards the east a little bit, or towards the west a little bit, or go southeast, to get to the southeast corner?
A. You go west.
Q. How far is it?
A. I do not know the distance; I never measured it.
Q. About how far?
A. I do not know.
Q. What kind of a place is it on?
A. On a kind of a flat place like; there is a road close to it.
525 Q. How close is the road to it?
A. I could not state exactly.
Q. About?
A. Not far.
Q. How far?
A. I can not state.
Q. One hundred yards from it?
A. May be one hundred, may be 2 or 3.
Q. Between 2 and 3?
A. I do not know; I won't say. I do not know; I never measured it.
Q. Don't you know exactly what it is?
A. I do not know exactly what it is.
Q. Did you ever measure the distance from Igo's spring to that northeast monument?
A. No, sir.
Q. Was there a flag in that pile of stone?
A. Yes, sir.
Q. Is there a flag at the southeast corner?
A. There has been; I do not know whether there is now.
Q. There was a flag there?
A. There was at one time.
Q. You say that monument is on the side of a hill?
A. Yes, sir.
Q. When did you see a flag in it?
A. It has been some time ago.
Q. In '95?
A. No; it was after.

Q. How long after?
A. I do not know.
Q. Was it there near the top of the hill?
A. Yes, sir.
Q. What direction does the road run from that particular point?
A. Which road?
Q. The road that you say is near the monument.
A. Which way? There is a road going—one part past Santa Cruz, and another part past San Pedro and Tombstone—on the west to Nogales, Washington Camp, Tucson, and Lochiel.
Q. In what particular direction does the road run, going to these various directions from Lochiel?
A. It is not near Lochiel at all.

526 Q. From the point where this pile of stones is, that you say that you never saw before; in what direction does the road, in going in the various directions from Lochiel, go?

A. I do not know the compass.
Q. You have no idea as to how the road runs?
A. I don't know what it means.
Q. Where is this east center monument?
A. It is on the mesa there.
Q. On what mesa?
A. Close to where I used to live; it is close to the edge of the mesa where the water runs down into the Potrero Canada.
Q. How far from the edge of the mesa?
A. You might call it just where the water commences going down.
Q. About how many feet from the edge of the mesa?
A. I can not say; I never measured it.
Q. Is it a 100 feet or a 1,000 feet?
A. It is not a 1,000 feet.
Q. Is it a 100?
A. May be a 100; may be less. I do not know.
Q. Is it about 200 feet?
A. May be; I do not know; it is not much.
Q. Less than 200 feet?
A. I do not know; I never measured it.
Q. Where does the road run there; how far from the monument?
A. I do not know the distance.
Q. About how far?
A. I could not say.
Q. Is it a 100 yards?
A. Maybe it is; I won't say.
Q. Is it 50?
A. Maybe; I do not know.
Q. Who took you to the monument?
A. I went on horseback; I guess the horse took me.
Q. Who was with you?
A. The horse; nobody else.
Q. When was that?
A. Along about '84 or '5.
Q. Anybody ever go there with you?

A. Well, different parties.
Q. Who?
A. There was Mr. Spaulding.
Q. When?
A. I do not know.
527 Q. Anybody else?
A. Yes, sir; Thomas Duncan.
Q. When?
A. I could not say.
Q. Before '84?
A. It may be '84 or '5.
Q. Was it before that?
A. No, sir.
Q. Did he take you there?
A. No, sir.
Q. Did you take him to the monument?
A. No, sir.
Q. How did you come together to the monument?
A. Horseback.
Q. How did you come to go there?
A. Looking for cattle.
Q. Just riding along the road?
A. No, sir.
Q. Riding over the country?
A. Did not look on the roads for cattle.
Q. Do you know where the head of the Potrero Canada is, the road that goes around the Canelo Hills?
A. It goes through them.
Q. Where did you find this monument?
A. That monument is this way, down, looking this direction, south.
Q. From Mr. Campini's how do you go to it?
A. If you crawl up the gulch you get to it.
Q. What gulch and what direction?
A. That gulch runs right straight to the monument; there is one on each side of it.
Q. Gulch on each side of it?
A. Yes, sir; I believe right close to it there is two wagon roads, one goes to the Potrero Canada, and the other one down to Muchachita and to Fort Huachuca.
Q. From right where these roads branch off, where do you find this monument?
A. It is between the two roads.
Q. How do you get to the road where the monument is?
A. Just travel to it?
Q. Did you say the road runs close to it?
A. Yes, sir.
528 Q. Does the ground slope down or does it slope up from the road to the monument?
A. It slopes both ways.
Q. From the road to the monument and from the monument to the road?

A. Yes, sir.
Q. You can see the monument from the road, can you?
A. If you are on horseback, I think you can; I know you can see the pole, flag in it.
Q. Who took you there?
A. Horse.
Q. Who took the horse?
A. Hand.
Q. Who went with you?
A. Hand.
Q. Did anybody else go with you?
A. No.
Q. There was a flag and pole in it?
A. Yes, sir.
Q. Where were you going?
A. I was going to Huachuca for a Government sale of horses.
Q. Did you go by this monument at Igo's then?
A. Went by Igo's; yes, sir.
Q. Were you summoned as a defendant in this case?
A. No, sir.
Q. As a witness?
A. I believe so.
Q. When was that summons sent to you?
A. I think I received it last week; in May, this month.
Q. Who talked with you about your knowledge on the subject before that?
A. I talked with lots of people.
Q. Anybody connected with this case?
A. I think, presume they was.
Q. Who was it?
A. I talked to the assistant United States attorney in this case, I believe.
Q. When?
A. When he was at La Norie.
Q. How long ago was that?
A. I think it was in this month or in April; I do not know.
Q. Had you been summoned as a witness before that?
A. No, sir.
529 Q. When you were at the Rodeo camp, Mr. Cameron's ranch, he refused to allow you to eat from his camp wagon?
A. No, sir.
Q. And the next day you attacked him?
A. No, sir; I never made any attack on him.
Q. You did not pay?
A. I do not pay at any place.
Q. You board at ranch wagons and do not pay?
A. Sometimes I do and sometimes I do not.
Q. You did not attack him the next day?
A. I never attacked him.
Q. Did you not threaten him with a six-shooter?
A. No, sir.

Q. Did you have a six-shooter?
A. No, sir.
Q. Did you not tell Mr. Cameron the next day that you would kill him?
A. For what? Ask Mr. Cameron for what; ask him; ask him, and if so, for what?
Q. Did you tell him that?
A. Ask him and if he says so, for what.
Q. Did you tell him that?
A. No, sir.
Q. Did you tell him that you would kill him?
A. No, sir. He got away with my cattle; Mr. Cameron had 4 of my cattle and he refused to give them up; Mr. Cameron got my cattle and I told him that I wanted pay for them.
Q. How many cattle did you have running out there?
A. I do not know.
Q. You never did know, did you?
A. No, sir; not exactly; I presume Mr. Cameron knows, he is my partner, he just steals my cows and keeps the money. I presume he is my partner, that is the gentleman right there (pointing to Mr. Colin Cameron), he can not deny but what he got them and kept them, I brought them to the corral and showed them to him.
Q. When you rode by that center monument prior to 1884 you say you were prospecting.
530 A. Yes, sir; I was prospecting. I came across the Huachucas and down into the Santa Cruz.
Q. Where did you come across the Huachucas?
A. At the Canelo Pass.
Q. What Canelo Pass?
A. That is the pass there where the Canelo road runs.
Q. Where did you come in?
A. On the north side, the center of the valley; the one north of the center of the valley.
Q. Where did you stop?
A. I stopped at Santa Cruz and went north the next day.
Q. Did you go to Santa Cruz on your way to the Patagonia Mountains?
A. Yes, sir; I struck right in the mountains and followed the mountains; that road there comes down on the west side of the Santa Cruz River; some of the road is on both sides of the Santa Cruz.
Q. This place where the ruins are is that on the east side of the Santa Cruz?
A. Yes, sir.
Q. When was the first time you went over there?
A. It was after I came back from Mexico and settled over in the Huachuca Mountains.
Q. When was that?
A. It was in '82 or 3 I think.
Q. What were you doing there then in the Huachuca Mountains?
A. I had a few cattle.
Q. Mining and running cattle?
A. Yes, sir.

Q. What was the occasion of your going to these old ruins down in the valley?

A. Riding around.

Q. What did you go over there for?

A. Riding after cattle.

Q. In looking for cattle you followed the road to the monument?

A. I did.

Q. You mean to say that there was no monument there then?

A. I do swear that there was no monument out there then; it
531 was not there then, there may have been two or three rocks, there was none such as there is there now.

Adjourned until to-morrow.

MAY 23rd, 1899—10 a. m.

Redirect examination of E. J. HAND by Mr. Pope for the Government:

Q. Did I understand you to state in your testimony that in '83 and 4 there was no wagon road going by Mr. Igo's?

A. If I made such a statement it is a mistake; in '83 and 4 there was a good wagon road there at that time; I meant to say in '70, 4, or 5, or '73, along in there there was no road.

Q. These piles of stones which you spoke of yesterday as mountains, when did you first see them?

A. '84 or 5.

Q. What was their appearance as to age; did they appear to be old or new?

A. They were new in '84 or 5.

Q. Had you seen any surveyors there making a survey just previous to that time, made under Surveyor-General Wasson? I mean when you first saw these monuments.

A. I heard of it. No; I never seen any.

JOSEPH CAMPINI, recalled by the Government for further redirect examination by Mr. Pope:

Q. On your former examination you testified about having seen a number of stone monuments for the first time in '84 or 5?

A. Yes, sir.

Q. Stone monuments on the boundaries of this grant?

A. Yes, sir.

Q. At that time what was the appearance of those stone piles, or monuments, as to age?

A. In the fall of '84 or spring of '85 they were new.

Q. Where had these stones been taken from?

A. Right around the pile where they built them.

532 Q. Did you see where the stones had been taken?

A. About 50 or 60 yards.

Q. Did you see the place where these stones had been taken out of?

A. Yes, sir.

Q. And as to wagon tracks?

A. Yes, sir; there was wagon tracks around at the foot of the hill.

Q. You spoke in your former examination about men there?

A. Yes, sir; a force of men with wagons.

Q. How long was it after you saw them was it you saw this monument—east center monument?

A. The next day, with a flag in it; that was on the monument.

Q. Did you say you have a mine right at, or near, the end of the Canelo Hills?

A. I have.

Q. Where is that with respect to Tanner's Pass?

A. On the north of Tanner's Pass; northwest.

Q. Where is it with respect to the point of the Huachuca Mountains?

A. It is about the center of the Huachuca Mountains.

Q. Where is it with respect to the spur of the Huachuca Mountains?

A. It is in a spur.

Q. What is the character of the face of the mountains there as to being sloping, or abrupt?

A. It is very sharp, very abrupt, about probably 75 or 80 feet—and then there are three or four sharp peaks.

Q. Where is this bluff and sharp place with respect to your mine?

A. Right over the mine, or above.

Q. Is there a spring at this mine?

A. Yes, sir; there is a spring at the mine.

Q. Have you any specimens of that copper from that mine with you?

533 A. Yes, sir, I got specimens.

Q. Are all these from this mine of yours?

Q. Where are these specimens from?

A. Right on the foot.

Q. And where with respect to this spring?

A. Upper end of this Huachuca, just about a mile, and the other is just about a thousand yards, joining together.

Q. This is what you call copper?

A. Yes, sir.

Q. Do you know any larger piece of copper that was taken out of that mine?

A. Yes, sir; there is one of 160 pounds at the university; one piece of 45 pounds at the foot of the Huachucas, taken right out of this place; picked up from the ground right there.

Q. Where is Silesas Canon?

A. That is the same as Tanner's Canon, they call that, on the east side.

Q. How far is this mine of yours from Collins' old place?

A. It must be 3 miles, something like that, on a direct line where this mine is, towards the east.

Q. Where is that with respect to the end of the Canelo Hills?

A. Collins is at the end of Canelo Hills.

Q. Any spring there?

A. Yes, sir.

Q. You know of any old piles of stones in that section of country?

A. There is a monument about a mile and half of the spring, of Collins, right on the divide of the Huachucas, water shed of the Babocomari and the San Rafael; there is a big pile of stones there.

Q. What direction from Collins?

A. North; you find a monument of stones, miners' monuments, most anywhere.

Q. You say you were up at Igo's spring?

A. Yes, sir; April, '80.

Q. You also testified as to that monument in the road that is
534 east from there?

A. Yes, sir; on the ridge along the road, or in the road.

Q. How does that monument lie with respect to the spring at Mr. Igo's?

A. It is about 50 feet lower.

Q. You mean in elevation?

A. It is that much lower, yes, sir, as far as I should judge; it might be more, and it might be less; three or four rocks piled together at that time near that place. In the early '80s there was two prospects right by and sunk a shaft, two Germans. There was another fellow there, named Patty. He put his monument on the ridge—that is, the ridge where the monument is—but there was no monument where that monument is standing in the road; there was the road.

Q. This was on the ridge, and how far from this monument where he made his location?

A. Well, probably ten or 12 feet off where is the main ridge; this was on the road; not many traveled on the road. There was nothing about two years or a year and a half, when they begin to come in.

Cross-examination by Mr. HENEY:

Q. What sort of a looking monument was that you saw?

A. Rocks piled one on top of another and on the road, ten feet away from the road.

Q. In what direction from the road going from Igo's towards Huachuca?

A. On the south.

Q. That would be on the left hand going from Igo's to Huachuca?

A. No, sir; that would be on the right side.

Q. Is there a road on each side of the monument?

A. Yes, sir.

Q. Which is the new one?

A. The one on the left-hand side; I can not tell; there is no new road; the people had made it before the monument was put there; the monument was up in the middle of the road—that is, I suppose it was put there so you gentlemen won't know when it was built.

535 Q. When you supposed they wanted to let us know they wanted to let you know, and you did not think they were building that in secret?

A. No, sir; in these miners' monuments there was only three rocks. That is the way they always built them.

Q. When you first saw that monument in April, '80, can you swear positively that when you first saw that monument there were only three rocks in it?

A. Which was a miner's monument of three rocks, one on top of another.

Q. You swear there was only three?

A. There might have been 4.

Q. You swear there was only three?

A. Yes, sir; no trouble about telling miners' monuments from land-grant monuments.

Q. No trouble at all?

A. Because they don't pay men to build them.

Q. They build them themselves?

A. Yes, sir.

Q. You think Mr. Cameron ever built any himself?

A. O, I guess he did.

Q. Who was it you saw go down towards that monument of the grant the day before you first saw the monument there?

A. Colin Cameron, Brewster Cameron, and their father, and Roskruge, photographer—I do not know his name—and Elias. There was probably half a dozen other men along there with them, three wagons, buggy, photographer's wagon covered up, and the two-horse wagon—anyway it had a spring on it, I guess—I did not pay much attention about it.

Q. Where were they when you saw them?

A. In front of my house.

Q. Going up the canon?

A. No, sir; there was no canon there.

Q. Were you living on the Potrero?

A. No, sir.

Q. Where were you living then?

A. In Tanner's canon.

Q. How far from the Santa Cruz valley?

A. 9 miles or 10 miles. I do not know what point you take now.

536 Q. In what direction were they going, up the canon?

A. No, sir; they were going across the hill from towards the southeast towards the east center monument.

Q. You first saw that monument in '84?

A. I believe it was in '87.

Q. Did you not say you first saw it in '84?

A. Not that very one. In '84 that one was about a mile and a half to the east of that. They built a monument.

Q. You saw them build one?

A. I did not see them build it, but they built it.

Q. Who were his men?

A. Harry and John McCarthy, and some other men. I saw them putting letters on the rock.

Q. What letters did they put on the rock?

A. I do not remember now. I was not interested enough to put it down in a book.

Q. You can remember very distinctly?

A. Yes; I think I can.

Q. Where are these piles of stones from the southeast corner?

A. Running north on the line.

Q. Are they not on this southeast corner monument where it is now?

A. No, sir; they are east of the southeast corner.

Q. Then they moved that southeast corner back further so as to take in so much land?

A. Yes, sir; just to suit themselves, for their own convenience.

Q. Have you ever seen a survey being made?
A. No, sir; I never went along with any surveyor.
Q. Never saw one being made?
A. No, sir.
Q. You have been along behind the surveyor more than once?
A. I been around and see what they were doing—whether they built monuments.
Q. Did they put up a pole and drive stakes in the ground every half mile?
A. I do not know whether half a mile or 50 yards.
537 Q. You did not see them taking any sights?
A. You bet I did.
Q. Did they put up flags and stick them in rocks?
A. No, sir.
Q. Did they stick them in the ground?
A. They had an iron point on the end and they run that in the solid rock.
Q. When were you the last time there at that monument on the southeast corner?
A. The last time I was there was in October, 1898.
Q. October, 1898?
A. Yes, sir.
Q. When was the last time you were at that point, that monument, before you saw Mr. Simon Cameron, Colin Cameron, and Brewster Cameron, and the Mexican, and Buehman, the photographer, there—when was the last time?
A. It was a day or two.
Q. A day or two before?
A. Yes, sir; I had to ride over the range every day.
Q. How large are the stones in that monument?
A. I never measured them.
Q. Well, but you have not measured any of these others you have been giving the size.
A. I never measured them.
Q. Can you tell about how large in size?
A. I never paid attention how large they are.
Q. Give us the kinds of rock in that monument or the number of rocks in that monument, can you?
A. No, sir; because there is more than a wagon load.
Q. Describe that land where that monument is?
A. It is table-land considerable coming out in a point just down about 25 feet from the top of the side of the hill.
Q. And then it goes off as a table-land, does it?
A. It goes off on a table-land gradually and begins a big high mesa.
538 Q. How long before it begins to go off in a mesa?
A. Say the distance of a mile; it begins to fall a 100 or 200 feet higher than the top of the mesa.
Q. And that is how far off?
A. About a mile and a half.
Q. About a mile and a half?
A. Yes, sir.

Q. How much higher would that monument be than the mesa?
A. I do not know anything about how high; I am no surveyor; I never pretend to know how high.
Q. Have you not stated how high these piles of rock were?
A. No, sir; I never said.
Q. Do you know how high this table-land is about where it starts 25 feet above the monument?
A. No, sir.
Q. You did not measure that either?
A. But I saw where the monument was there. I suppose it is there to-day.
Q. Now, without being a surveyor, you state that the monument is about 25 feet from the edge of the mesa, and if that pile of stones is placed 50 feet beyond, how much higher than the monument would that pile of stones be?
A. It would be probably 40 feet—40 or 50 or a 100 feet from the monument.
Q. It would be about 15 feet higher than the edge of the mesa then?
A. Yes, sir.
Q. Now, you are sure it was not more than two days before you saw these men there at that monument?
A. Yes, sir; I am sure.
Q. It might have been only one day?
A. Yes, sir; it might have been only one day.
Q. When did you first see that east center monument?
A. That same day. What do you call the east center monument?
539 Q. I mean the one on the mesa near the Potrero Canada. When did you see that?
A. The next day.
Q. After you saw the Camerons and the Mexican and the photographer?
A. Yes, sir; never had seen it before that; there was no monument before there.
Q. Then this other place you saw a monument there in '84, or '84 or '5?
A. It may have been there, because they took it when they come back; there was a big pile of rock there.
Q. There may have been a monument there for 15 years?
A. But there was no monument there until they built it up there.
Q. Do you know whether there was as a matter of fact prior to that time two monuments there or not?
A. One of them was not there; there was nothing there in the shape of any monument whatever.
Q. Did you say there are two roads or one road goes this way?
A. Yes, sir.
Q. Can you see the monument from the road?
A. Yes, sir; right along the side of it.
Q. How close to it?
A. One road about ten feet and the other 15 to 20 feet.
Q. And you are sure it was not there?
A. It was not there.

Q. And when did you see it last before you saw them going up there?
A. I saw it in November; the first day of December, I came into Tucson.
Q. When did you see it the last time prior to that time?
A. I think a week.
Q. It might have been as much as a week?
A. Yes, sir.

Q. From what direction from the monument at the southeast
540 corner as was taken by us were the stones hauled from; from what direction were the stones brought; the place where the stones were taken?
A. From the southeast.
Q. From the southeast?
A. Yes, sir.
Q. That would be the mesa?
A. No, sir; there is a canon coming out.
Q. Is there a place there where the stones have been taken out?
A. Yes, sir; and there were wagon tracks around there.
Q. Wagon tracks?
A. Yes, sir.
Q. Have you been there lately?
A. I was there last October.
Q. Any hole there?
A. I never looked for any hole; I was not hunting for holes then.
Q. The place where the stones had been taken out; you were not hunting for holes?
A. No, sir.
Q. You found a hole there, did you not?
A. I did.
Q. Where some stones had been taken out?
A. Yes, sir.
Q. Did you find one when you went back there in November?
A. I did not look for it.
Q. What did you go after in November?
A. I traveled up that road looking for cattle and whatever I chose to go there for.
Q. When you were there in November were you on horseback?
A. Yes, sir.
Q. And last October?
A. Horseback; yes, sir.
Q. You were looking for cattle and not looking for monuments?
A. I was looking for cattle.
Q. If the monument we take as the east center monument is at least 100 feet away from any road, are you and I ta'king about the same monument?
A. I believe we do.
Q. You say there is one road that runs ten feet and another one that runs 15 feet?

541 A. I do not believe you have been there. There is your road marked mesa on one side.
Q. Which side of the mesa?

A. It is on the edge of the mesa.
Q. It is on a ridge?
A. It is on a mesa.
Q. It comes down in the canon here, does it?
A. Yes, sir; it is on a ridge that is on the mesa.
Q. Now, then, this wagon road—there is a wagon road out there—this is a wagon road, marked "road;" this is the road here?
A. Yes, sir; marked "road."
Q. This road here comes up the ridge from the vicinity of Tanner's Pass, the road that goes up to Duncan's road?
A. This is the Duncan road over here; this is the Duncan road or Tanner's Pass; this is Campini and Bursige and Patsy Maloney.
Q. Where is the edge of the ridge; does the road run right along the edge?
A. Yes, sir.
Q. Then it comes in here?
A. Yes, sir; this is the road.
Q. What road is this?
A. It is the Campini and Patsy Malony road, and here is the Parker Canon road, the Potrero Canon road that goes right down the canon; it goes in the canon.
Q. What do you call this road?
A. That is the Fort Huachuca road; running north that is the Fort Huachuca road.
Q. How far is that monument from the Bursige road?
A. It is about a 100 yards on this side.
Q. How far is that monument from the Tanner's Pass road?
A. Just about the same; a 100 yards; marked 100 yards.
Q. How far is it from the Huachuca road?
A. From the Huachuca road it is about ten feet; that is right there.
Q. Where is the road that you said was 15 feet?
542 A. This is the one that I mean.
Q. You mean the Huachuca road?
A. Yes, sir.
Q. That is down far away?
A. Yes, sir.
Q. The other two roads are 100 yards away each, are they?
A. Yes, sir.
Q. That Huachuca is a well-defined road?
A. It is not in these days; I have used it.
Q. How long ago?
A. When I lived last over there.
Q. Before it used to be a good road?
A. Yes, sir.
Q. Was that road there in '87?
A. Yes, sir.
Q. And in '84?
A. It was hardly any road.
Q. And it was good road last year?
A. No, sir.
Q. Well-defined road last year?

A. Yes, sir.

Q. There was a road there in '95?

A. Yes, sir; it was not as good in '95 as it was in '87.

Redirect examination by Mr. POPE:

Q. Where does this Pot'ero Canada head with respect to this ridge that you spoke of?

A. Right on the back of it.

Q. Did I understand you to testify that the southeast corner of this grant as now claimed is at the same place as this monument that you saw located there in '87?

A. I do not know; there are three monuments there; I do not know which one they are claiming.

Q. About how far is this monument that you saw out there in '87 from the mouth of the Pot/ero Canada?

A. It is at least ten miles or ten miles and a half; I never measured it, but it is.

Q. But you do not know whether the one they are now claiming is the one you saw there in '87?

A. No, sir.

Q. This red line indicates Mr. Bonillas' survey; that is the
543 line they are now claiming, and the lines of the survey of Mr. Roskruge, made in 1887, are in solid black lines indicated here; now, this monument which you saw in '87, where is that with respect to that black line and that red line; how many miles is it from the corner to the black line and that red line?

A. Four or five miles. I guess that is the monument that they built in '87.

Q. How far is it from the mesa of the Potrero Canada?

A. I never measured it.

Q. The north of the monument is that black dot here north of the presidio?

A. Yes, sir.

J. P. HOHUSEN, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. Where do you reside?

A. Tucson.

Q. Are you acquainted with this valley of the Santa Cruz?

A. I used to live over in that country.

Q. When did you first see it?

A. In '80.

Q. Where did you live in that valley?

A. I lived right in the valley on the old Salvens ranch in '84; in '80 I lived in Harshaw, on this side.

Q. And '81?

A. In '81 and 2 I lived in that valley.

Q. And how long did you live there?

A. I stayed there until about '84.

Q. What business were you in?

A. I was working for Mr. Richardson and had cattle of my own at the same time.

Q. Did you ride the range?

A. Yes, sir.

Q. Did you become familiar with the country of Slavens ranch and the Huachuca and Patagonia mountains?

A. I rode that country every day for miles.

544 Q. When you were down in that country did you see—do you remember seeing—any ruins of houses on the west side of the Santa Cruz river a mile or so above the international boundary line?

A. There is an old ranch that we called Enriquez ranch; that was above the international boundary line.

Q. About how far?

A. I should think about a mile or mile and a half; something like that.

Q. Did you ever hear while you were down there about Old San Rafael?

A. There was some abandoned houses, I think, right close to Enriquez, or right adjoining, what they called Old San Rafael; tumbled-down adobe walls, or something like that.

Q. How far from Enriquez ranch?

A. Right close towards the line; down the river; right adjoining Enriquez ranch.

Q. Did you ever hear any other point called Old San Rafael?

A. They called the whole valley the San Rafael Valley.

Q. But any particular place?

A. No, sir.

Q. No settlement?

A. No, sir.

Q. Do you know where there is a mesa and some old ruins about southeast from Salvens place on the east side of the river?

A. There is an old place below there on the left-hand side of the valley.

Q. Anything which would be called ruins of adobe houses or open corrals?

A. No; not that I saw; little ridges—little pieces of the ridges—or something like that.

Q. Anything to show what they were built out of?

A. No, sir.

Q. Did you ever see any pottery?

A. I think I did. I think there was pottery in that part of the country, over that mesa; I rode over frequently, but I never paid any particular attention.

545 Q. Did you ever hear that place called Old San Rafael?

A. No, sir.

Q. About how far is that down the river from Salvens?

A. I think about half a mile; probably a little more, on the east side of the river.

Q. When you were down there was there on that mesa any piles of stones or monuments?

A. No, sir.

Q. What was the character of the mesa as to stones?

A. There was not large stones on the mesa; that is a kind of level place; there is not much stones down there until you get to the river, but little rocks, gravel, &c.

Q. On the edge of the mesa towards the river was there any piles of stones?

A. I never saw any.

Q. Now, when you were down there did you know a natural object called the penasco?

A. Yes, sir.

Q. Where is that located?

A. That was at the head of the San Rafael Valley.

Q. And where is it with respect to the divide between the Sonoita and the Santa Cruz?

A. It would be just about west; the watershed is both ways from there.

Q. Looking out from the Slavens place, towards the northwest, what is the most prominent natural object that appears before you?

A. The penasco is the first rock, or hill rather, when looking from Salvens ranch up that valley.

Q. Can you see it from Salvens ranch and down the valley?

A. I am not very certain as to that.

Q. What kind of a rock is it?

A. It is quite a high bluff, kind of a red'ish and yellow, quite steep; I would not say how far down that valley a person could see it.

546 Q. Look at this map; this represents what is called the Canelo Hills, marked Canelo Hills, and here is a line running from the Canelo Hills west towards Harshay, and here is a peak called Saddle Mountains, right on that divide——

A. That is the penasco right there, the place marked Saddle Mountain; I think that is what they called the penasco.

Q. Did you ever hear it called anything else?

A. No, sir.

Q. Did you ever hear it called Saddle Mountain?

A. No, sir.

Q. Did you ever hear any other place further north and northwest called the penasco?

A. No, sir; I never did.

Q. Were you with Mr. Richardson and Mr. Roskruge making a reconnoissance of this grant?

A. I was with them once; yes, sir; on a kind of a survey on two sides of it.

Q. Were you looking for monuments?

A. Yes, sir.

Q. Did you look for monuments about Mr. Igo's?

A. We did.

Q. Did you find any monuments?

A. No, sir; at that time Mr. Trass was on that tract.

Q. Did you have Mr. Trass with you?

A. Yes, sir.

Q. Where did he indicate as to that being a corner of this grant? (Objection as hearsay.)

A. He pointed down south, down along the range; there was quite a prominent bluff and he said that was a corner of the grant.

Q. Down south from his place?

A. Yes, sir.

Q. On which side of the Huachuca Mountains was that?

A. On the west side.

Q. Did he at that time, or any time when you were there, say that that monument was a corner of this grant beyond the point of the mountains there?

A. If he did I did not hear it.

547 Q. You heard him point out this other?

A. Yes, sir; I did; that is he pointed out certain bluff down there that he thought was the corner—what he had understood was a corner.

Cross-examination by Mr. HENEY:

Q. You say you lived in Harshaw in '80?

A. Yes, sir.

Q. You heard at that time that the owners of the grant claimed that it covered Harshaw, did you not?

(Objection to that, as we did not go into that on direct examination.)

Q. I will make him my witness. Did you hear in Harshaw in '80 that the owners of the grant claimed that it covered that place—Harshaw?

A. No, sir; I did not; no, sir.

Q. When you were at the town of Harshaw were you mining there at that time?

A. No, sir.

Q. What were you doing?

A. I was running a boarding house.

Q. When you first went down to work for Mr. Richardson, could you talk Spanish?

A. No, sir; I could not.

Q. Could you understand it?

A. I think I understood some, but not to carry on a conversation; I understood it very little.

Q. Who was living in that neighborhood, of the Slavens ranch, when you first went there?

A. There was Mr. Sheehy; lived right below—below on the left-hand side of the valley; Enriquez, a Mexican, lived below, and at Lochile, or what they called La Noria, there were some.

Q. Did Enriquez claim to own an interest in the grant?

A. I think he did, and that Mr. Richardson bought him out; I think that he did claim an interest in the grant.

Q. Did Aguierra live there?

548 A. He lived down below, in Mexico; yes, sir; when I went there he lived below; there was another man living there; I do not remember his name.

Q. Do you know of any Mexican ruins down there?

A. No, sir; there may have been.

Q. Have you heard of them?

A. No, sir; I never heard of them.

Q. How do you distinguish Indian ruins from Mexican ruins?

A. I would not be an expert on that; we call all these ruins over there; we call them Indian ruins; you see little kind of ridges; they may be Indian ruins, but, as a matter of fact, nobody seems to know.

Q. Were you out there when Mr. Allis made his survey of this grant for the Government?

A. No, sir; I do not think I was.

Q. This Mr. Hayes was living at the spring at Mr. Igo's, was he?

A. It was called Hayes' spring.

Q. Did you hear it called El Carricillo spring?

A. Yes, sir; they called it also that—Carricillo or Carricito; it was called Hayes' spring generally, because he lived there.

Q. Did you hear of a corner of the grant there?

A. Yes, sir.

Q. How far was that from the spring?

A. I would not swear; it may be 2 or 3 miles; maybe less.

Q. It was at a point there in the north end of the Huachuca Mountains, was it?

A. Yes, sir; it was a point in the north end of the Huachuca Mountains.

Q. Did you think at that time that he was holding that spring outside of the grant, did you?

A. They were living out of the grant; yes, sir.

Q. You thought so, did you?

A. Yes, sir; I thought so.

549 JULIUS KUNDE, recalled by Mr. Pope for the Government:

Q. You have already been examined in this case?

A. Yes, sir.

Q. You spoke of the penasco in your former examination?

A. Yes, sir.

Q. While you were down there did you go with Mr. Tipton, a special agent of the Government, to this penasco?

A. We went on top of it; yes, sir; 30 or 40 minutes on top of it. We stood around there awhile, round on top, and looked over the country towar's the red rock country, the center of the Santa Cruz Valley.

Q. You were asked on your former examination something about your having changed your name when you came to this country?

A. I did come under another name when I came to Arizona here. For five or six years I was under another name.

Q. You had some trouble in Texas?

A. Yes, sir; had some trouble in Texas, and afterwards I went back to Texas and stood my trial and was acquitted.

Cross-examination by Mr. HENEY:

Q. Mr. Cameron furnished the money to defend you, did he not?

A. I got some money from him.

Q. You owe him $3,500.00 now, do you not?

A. No; I do not now.

Mr. POPE:

Q. Before that you worked for Mr. Slavens, and afterwards for Mr. Richardson and Mr. Cameron?

(Objection to his proving his good character.)

A. Yes, sir; for 13 years. I was Mr. Cameron's foreman up to '93.

Mr. BARNES. We offer in evidence certified copies of United States

patents number 3884, No. 9, to the Mowry mine; also copy of patent number 14828, No. 10p; also patent number 14827; also two deeds under which Mr. Igo claims, and copies of them. (Defendant's Exhibits numbers 12 and 13.) Also a deed from one Salgado to Mrs.
550 Catharine Sheehy. (Defendant's Exhibit No. 14.)

WILLIAM M. TIPTON, recalled by Mr. Pope for the Government:

Q. What is your name?

A. William M. Tipton.

Q. What is your employment?

A. I have already testified to that in this case, I believe.

Q. As special agent of the Government have you investigated this tract of land known as the San Rafael de la Zanja claim or grant?

A. Yes, sir; I have.

Q. When was that?

A. In the month of April last past. I think about from the 13th to the 20th of that month I was there.

Q. Were you at a place in the valley of the Santa Cruz River, a mesa on the east side of the river, with Mr. Kunde and Mr. Finley and some others?

A. Yes, sir.

Q. Was that the place where there was a pile of stones on the edge of the mesa?

A. You mean the place below Slavens?

Q. Yes, sir.

A. Yes, sir.

Q. I will get you to state and describe to the court just what you saw there in evidence of former habitation, ruins of former habitation.

A. Well, the top of that mesa for a distance of perhaps 12 or 15 chains in a northern and southern direction along the edge was covered with ruins. They extended back from the edge of the mesa towards the east perhaps as great a distance; perhaps a little further than the length north and south. There were no walls standing, but there were mounds of earth shown where the walls had fallen in, and the lines of the walls were plainly visible in many places, showing what marked evidently the walls of rooms, and at one place there was a long line of walls that
551 evidently marked the former line of a street. There were scattered all over the ground pieces of broken pottery, some arrowheads of flint. We saw portions of metatas or stones used for grinding corn and grain by the Indians and Mexican people, and portions of stone mortar. These were about the only things that I recollect now.

Q. What was the appearance of these ruins as to age?

A. I should judge they must have been very old.

Q. What was the character of the material of which the ruins were made?

A. It was evident, I think, that portions of the walls of the house had been at one time built of stone, but they were so much destroyed that it was impossible to say as to whether they had formed any very large portions of the walls or not.

Q. Were there any indications of adobe having been used in the structure?

A. I do not remember seeing any adobe bricks, but you can run the lines of the rooms; in one place there was a partially excavated fireplace, and somebody had been digging there.

Q. Have you had occasion in New Mexico to look into the question of Indian ruins to some extent?

A. I have had occasion to examine some Indian ruins in New Mexico.

Q. Based upon your observation of this character of ruins in New Mexico, was there anything connected with these ruins to indicate their origin?

A. Not the character of their former inhabitants; the character of the broken pieces of pottery found there was the same as is found in old Indian ruins in New Mexico.

Q. What is the character of the pottery?

A. I do not know that I can describe it in detail. The character of the figures of the ornamentation on the material are different from that of the modern pottery now made in New Mexico, but the frag-
552 ments that we saw at these particular ruins are similar in a general style of ornamentation to those that I saw on the various kinds in New Mexico, and the lack of arrangement in the houses struck me as being similar to the ruins of a number of houses I saw in New Mexico of Indian ruins or towns.

Q. Anything else as to material found there that bore on this question?

A. I do not recollect anything else that we found there except these pieces of metatas and a portion of a mortar and Indian pottery and arrowheads.

Q. What kind were they?

A. Several flint arrowheads.

Q. Would you know some of this pottery if you saw it?

A. I know what I did have myself. I think perhaps I have some in my camp outfit; I had some arrowheads.

Q. I will get you to look at these specimens of pottery and state how they compare in general appearance with the pottery you found there.

A. These are the same general kind as I saw down there.

Q. When you were there with Mr. Kunde and Mr. Finley and some others, was Mr. Allen there also?

A. I think he was.

Q. Did you have pointed out to you what is called the penasco?

A. Yes, sir.

Q. Did you subsequently, with Mr. Kunde, go to this penasco?

A. I did.

Q. Will you describe to the court the appearance of this penasco, looking at it from this center place, these old Indian ruins you have described?

A. From that point the penasco appears to be a very large rock, apparently rising out of the prairie from these ruins you spoke of.

Q. Looking towards the northwest from this center point, is this penasco prominent or otherwise as a land mark in that direction?

553 A. Yes, sir; it is very prominent.

Q. What would you say as to its being the most prominent landmark in that direction?

A. Well, within a number of degrees on either side there is no other as prominent as that is on the horizon.

Q. Did you subsequently go to this penasco?

A. I did.

Q. Have you ever seen in New Mexico what the Mexican people call a penasco?

A. Yes, sir; numbers of them.

Q. Do you know, then, according to your observation in New Mexico, what is generally called by the Mexican people a penasco?

A. Yes, sir.

Q. Looking at this point which you have described as pointed out to you as a penasco, looking at it from this center point, at these old Indian ruins, what would you say as to its appearance as to being a penasco or not?

A. It has that appearance from that point.

Q. You subsequently went to the top of it, did you?

A. I did.

Q. I wish you would describe it.

A. Well, it is a large hill that rises practically on the edge of the elevated lands along the Santa Cruz, and where this table land, as they call it down there, or mesa, breaks off towards the Sonoite in a northern or northwestern direction the north slope of the hill is covered with timber, and while very steep is capable of being ascended; on the southeast, south, and southwestern faces of it it is simply a rocky precipice, extremely steep and practically without timber on the south side; may be some grass or small shrubs growing in the rocks; that is not timbered; and on the north side—that is, within, say, 50 or 100 feet, or perhaps not over 50 feet on the north side—it is also extremely steep and difficult of ascent at most points.

554 Q. Where does it stand with respect to the divide between the Sonoite and the Santa Cruz rivers?

A. Right on the edge, I should say.

Q. On which edge; towards the Santa Cruz or towards the Sonoite?

A. I think the water flowed on the north side into the Sonoite and on the east and easterly side the water drained into the Santa Cruz.

Q. Looking from that penasco east toward the Canelo Hills, state whether or not there is visible any drainage towards the Penasco.

A. Yes, sir; there is from the direction of the Canelo Hills, and not far from the top of the watershed between the Sonoite and the Santa Cruz there is a sort of a cañon or valley-like depression south of the break towards the Sonoite that runs towards the Penasco.

Q. What distance?

A. That I could not state; I only observed it from the Penasco; perhaps for a mile; perhaps more than that.

Q. You did not go to that?

A. No, sir; not at the place where it appeared to be running towards the Penasco, but I was on the same drainage at a point further south than that, after it had turned south, running down towards the central part of the grant as claimed.

Q. Have you seen this map that has been introduced as plaintiffs' Exhibit F 52?

A. Yes, sir; I have seen it.

Q. You see the point marked Saddle Mountain?

A. Yes, sir.

Q. This penasco that was pointed out to you by these parties, where would you say that is with respect to the point marked Saddle Mountain?

A. I should think it was intended to be that point from my recollection of its location.

Cross-examination by Mr. HENEY:

Q. You do not know whether the same kind of Indian lived in New Mexico that lived in Arizona in early days, do you?

A. I do not know exactly what you mean by the same kind. Do you mean the same tribes, or customs, or what?

555 Q. Yes, sir.

A. No; I do not know; not in the portion of Arizona which we are talking about now. I do not know that.

Q. In the early days do you know whether the Mexicans made spears and arrows of the same stones that the Indian did and in the same way?

A. I do not know.

Q. In what direction did you go to the Penasco?

A. We went up the valley.

Q. I mean the place marked Saddle Mountain.

A. We started from the place marked Lochiel on that map and went in a northerly direction through the valley of the Santa Cruz River, somewhere in the vicinity of the place marked on this map in pencil with the letter R and the words "sheep ranch;' somewhere in that vicinity; then we turned west and went up to the hill.

Q. Did you pass by the hill they call La Zanja in going up to the sheep ranch?

A. Yes; I think we went right by that; I am certain we did.

Q. Did you go up on the mesa—did you reach the mesa two or three miles above that point in going to the sheep ranch?

A. I do not know what you call the mesa. I heard that word mesa used out here in a sense I never heard it used before. We continued right on up the general course of the valley of the Santa Cruz River for a distance of a couple of miles and then we turned off towards the west.

Q. When you went towards the west did you see any other object than that one which you went to see as the Penasco which you would term a penasco?

A. I do not remember where the point is exactly.

Q. Somewhere between this point called La Zanja on this map, between that and the upper river to the right of the hill marked Saddle

556 Mountain, on the west of the river, did you see a penasco?

A. There were other hills that became visible to the right and beyond that hill.

Q. And did you see a penasco there?

A. Yes, sir; I saw a number of penascos in that part of the country.

Q. A penasco may be applied to more than one place, natural objects, or class of natural objects?

A. It is applied in New Mexico—it has two applications there.

Q. What are they?

A. In the first place they apply it to a very big, high rock, and they also apply it to what we call a rocky bluff or face of a precipice.

Q. Do you find that New Mexico people have a good many terms,

applications of words to natural objects, that are not the same as those down here; do you not?

A. That is the case everywhere that I ever heard Spanish spoken, the use of local terms.

Q. Do you remember seeing a high, rocky peak at the point marked by Mr. Roskruge penasco after you got a few miles above the place called La Zanja?

A. I could not say that it was exactly at that point, but it was somewhere in that general direction.

Q. Quite a prominent land mark, is it not?

A. Yes, sir.

Q. And it grows larger and larger as you proceed north?

A. Yes, sir; the nearer you approach the top of that divide the plainer it is.

Q. I hand you plaintiffs' Exhibit F 29. Do you recognize that as a photograph of the point which is marked "penasco" on this Roskruge map?

A. Well, I do not think I do. I think it is not like that I saw of this particular hill, but if I did I did not observe it in the direction this photograph was taken.

Q. Do you remember whether you could see the Penasco after
557 you got in the neighborhood of the sheep ranch or anywhere in that part of the valley, the object marked "penasco?"

A. No, sir.

Q. Do you know whether you could see the penasco from the top of Saddle Mountain or not; the point marked "Saddle Mountain?"

A. I do not remember that I did; when we came down from Saddle Mountain we could see numbers of penascos and hills north of that.

Q. Do you remember whether you could see that particular place, marked "Penasco" on the Roskruge map, from the road in the vicinity of Cottonwood Wells?

A. I was not on that part of the grant.

Q. Did you go from Crittenden and Harshaw?

A. No, sir.

Q. How did you go?

A. We came in from the Santa Cruz Valley.

Q. How did you come out from the valley?

A. We went back into Mexico, and then further east.

Q. You did not go up to the north center monument of the grant, did you?

A. No, sir.

Q. Why not?

A. I was not told to go there. I do not know where such a place is, except as indicated by a map that we had.

Q. Who was with you?

A. Mr. Pope, assistant U. S. attorney for this court; Mr. Flipper, and a couple of men who were employed to drive.

Q. There was no suggestion of there being any north center monument anywhere, called for in the title papers?

A. Yes, sir; I think there was.

Q. Did you go there?
A. No, sir.
Q. You remained with them until they left?
A. Yes, sir.
Q. Did they leave when you did?
A. Yes, sir.
Q. Did you go in the vicinity of Igo's spring?
A. No, sir.
Q. You say that from the top of the Saddle Mountain, in looking over towards the place marked "Horse corral" on this Roskruge map,
558 that you could see a depression in the valley for about a mile?
A. Yes, sir.
Q. Would you call that depression an arroyo?
A. It was so far away I could not state positively that it was an arroyo, but there was a well-defined drainage. There was an arroyo in that same drainage at the point where we turn off to go to Saddle Mountain.
Q. Did you discover a red mountain from the point where an arroyo runs towards the penasco?
A. Yes, sir; we went over on a point on the Cancio Hills subsequent to the time that we were up on top of Saddle Mountain, with a view to looking over that country with that very object.
Q. Did you find one?
A. Well, there were some arroyos there for a short distance, in my opinion, running in that direction.
Q. Did any of them edge on the mesa—any one of these arroyos?
A. There is a mesa on each side of the arroyo; yes, sir; that was as much on the edge of the mesa as they could be; they were at the foot of it.
Q. Did you find any oak tree on the edge of the arroyo around there?
A. There were oak brush all over that country.
Q. Did you see one with a monument around the foot of it—stones around the foot of it?
A. I did not see any such stones as I would call a monument; there were plenty of stones.
Q. Did you discover a red mountain that would answer the description of these title papers?
A. There was a red mountain or hill that could be seen from a point at the west foot of the Cancio Range, between the place marked on that map "Saddle Mountain" and the point thereon marked "Penasco;" that red hill or mountain was somewhere in this vicinity, or over south perhaps—south of the northwest corner on this map—and the point from
559 which it could be observed I think was near where "Muchachita Pass" is written on this map in pencil.
Q. It is a very high red mountain, is it?
A. It is a high round hill, which appears to be high.
Q. That is the one which stands west of the road that runs down the Sonoite towards the northwest corner monument?
A. I do not know where your northwest corner monument is, except as I judge from that map, but I understand there is a road—in fact, I saw it from this point, which runs down west of the point marked "Saddle Mountain" on that map, and going out in a northwesterly direction.

Q. You did not discover that red mountain by the arroyo that might be said to run towards the Saddle Mountain?

A. I did not go up to that point.

Q. Did the other parties go up there?

A. No, sir; not that I know of.

Redirect examination by Mr. POPE:

Q. These observations which you spoke of were taken as to the arroyos looking towards the penasco—were taken in the neighborhood of that place marked "Muchachita Pass," were they?

A. Yes, sir; that is where the words "Muchachita Pass" are written on that map; about that direction, I think.

Q. What is the general character or color of that country towards the west there, back of the penasco, as to color west of the penasco, as to its color?

A. I do not know that it has any particular characteristic; there are red stains in a number of places; the mountains in places appear very dark where there is timber on it, and other places it appears rocky and barren.

Q. These mountains that had red stains, are they south of this one that you spoke of as being out in the vicinity of that northwest corner, west of the northwest corner as marked on that map?

A. Yes, sir.

Q. They might be observed from the top of what is marked on
560 that map as "Saddle Mountain?"

A. Yes, sir.

Q. Did you make any observation from Saddle Mountain as to red mountains towards the west there?

A. Yes, sir.

Q. What as to there being red mountains towards the west from Saddle Mountain laid down on that map—that is, from the northwest corner?

A. There was a number of places where the mountains were red.

Q. From what point?

A. Almost west, I should think, from the "Saddle Mountain," as there marked, up to the point designated as the northwest corner.

Mr. POPE. We desire to tender in evidence a document marked on the back, "History of the Rancho San Rafael de la Zenja grant, by Alfred A. Green," and filed in this court May 29, 1895, by Mr. A. A. Green. (Defendant's Exhibit No. 15.)

(Objection to it as heresay, and as being made after he had parted with his title, and on the further ground that we have title from other sources other than from Mr. Green, and it is not binding on us. Taken, subject to the objection.)

We also desire to tender in evidence a certificate of the treasurer-general of the State of Sonora, certifying that manual book of charges and entries corresponding to the year 1822 does not exist in his office. (Defendant's Exhibit No. 16.)

(Objection to that as incompetent.)

We also desire to tender in evidence a map of the county of Cochise, Arizona, made by H. G. Howe, county surveyor, and especially that portion of said map lying south of the 4th standard south down to the

bottom of the map. We will make tracings of it and put them in. (Defendant's Exhibit No. 17.)

561 (Objection to this on the ground that it is not binding on us.)

We also introduce in evidence the titulo presented in the San Rafael del Valle case, as related to the survey made of that grant by the Mexican Government. (Defendant's Exhibit No. 18.)

Also the titulo in the San Pedro case. (Defendant's Exhibit No. 19.)

We also desire to tender in evidence a translation of the titulo of the San Rafael de la Zanja grant, made by a special agent of the Government and adopted by the Government as its translation. (Defendant's Exhibit No. 20.)

Also a translation of a paper dated January 16th, 1831, tendered in evidence by the claimants as Plaintiffs' Exhibit F 58. (Defendant's Exhibit No. 21.)

Also a translation of a paper dated January 27th, 1836, introduced in evidence by the claimants as Plaintiffs' Exhibit F 59, addressed to the treasurer general by Pablo Frayjo. (Defendant's Exhibit No. 22.)

CHARLES A. SHIBELL, sworn on the part of the Government, testified upon direct examination by Mr. Barnes as follows:

Q. Are you the recorder of the county of Pima, Arizona?

A. Yes, sir.

Q. These volumes here are books of record of your office?

A. Yes, sir; records of Pima County, Arizona.

Q. Do you know the record of the patents of mining claims for lands included within the limits of the San Rafael de la Zanja grant issued by the United States.

A. Yes, sir.

Q. Will you read a list of the patents and their numbers?

A. Yes, sir; the Belmost, November 15th, 1875, recorded in Book 1, page 601; San Antonio, September 3rd, 1876; recorded in Book 1, page 621; Guajoloto, September 3rd, 1876, recorded in Book 1, page

562 628; Enterprise, September 6th, 1878, recorded in Book 3, page 135; Empire, February 11th, 1877, recorded in Book 13, page 768; Alta, January 10th, 1884, recorded in Book 17, page 213; Silver Bill, November 17th, 1881, recorded in Book 16, page 1; Enterprise, April 8th, 1880, recorded in Book 9, page 76; East Extension Enterprise, April 13th, 1889, recorded in Book 19, page 379; West Extension Enterprise, April 13th, 1889, recorded in Book 19, page 375.

Q. The patents to these mines are all recorded in these books?

A. Yes, sir.

Q. How long have you been recorder of Pima County, Arizona?

A. Ten years.

Q. The last ten years?

A. Yes, sir.

Q. During that time you may state in a general way whether the country in the neighborhood of Mowry, Washington Camp, and Harshaw have filed many mining locations and certificates in your office.

A. Yes, sir; a great many.

Q. You have no records containing land grants?

A. No, sir.

Q. No record containing the San Rafael de la Zanja grant?

A. No, sir.

Mr. POPE. We desire to make profert of some pottery which was shown to the court and referred to by Mr. Tipton in his testimony. I believe that is the Government's case.

GEORGE J. ROSKRUGE recalled by Mr. Barnes:

Q. Have you put on that map of yours the United States mineral monuments?

A. Yes, sir; in lead pencil letters.

YGNACIO BONILLAS recalled by Mr. Heney:

Q. Is there any distinction between the words Carricito and El Carricillo?

A. No, sir; both are diminutive of carrizo, and meaning a small cane, reed cane, a reed cane, a hollow cane.

563 Q. Examine that photograph and state whether you ever saw it before?

A. Yes, sir; I have seen it before.

Q. Have you compared it with the natural object on the ground?

A. I have.

Q. What is that a photograph of?

A. It is a photograph of the country from the point near the north center monument of the San Rafael de la Zanja grant, looking towards the northwest corner, red mountain in the distance.

Q. The red mountain taken as the northwest corner of this grant on your survey?

A. Yes, sir.

Q. What is this mountain on the right-hand side of the photograph?

A. That is a limestone mountain coming from the north and ending in a steep bluff at the Babocomari canon.

Q. Where is the north center monument which you have just described which is on the right-hand side of the photograph?

A. It is to the east.

Q. About how far?

A. I can tell exactly by looking at my notes: I find the distance from the north center monument to a flag which I had on the ridge of this limestone ridge to be 7,374.2 feet; in the immediate vicinity of the north center monument towards the east there are some high hills which obstruct the view.

Q. Did you observe from the north center monument or in that vicinity the north end of the Huachuca mountains?

A. I do not remember whether you can see them or not.

Q. Have you any note there in regard to it?

A. No, sir.

Q. The photograph which you just examined, when did you compare it with the natural objects on the ground?

564 A. I compared it December 4th, 1898.

Q. And that is looking at the red mountain from what direction?

A. In the vicinity of the north center monument towards the west.

Q. In what direction would you have to move in this photograph in order to see the Penasco which is represented on Plaintiffs' Exhibit F 34?

A. I think you would have to move to the right, towards the north, or almost in the direction of the line of vision towards the west.

Q. About how far?

A. Perhaps a ¼ of a mile or ½ of a mile.

Q. And then you would be looking down the arroyo which goes by the tree which has been taken as the north center monument, would you?

A. Yes, sir.

(We offer this photograph in evidence. Plaintiffs Exhibit F 73).

Q. Will you put a letter above the point of the red mountain as shown in that photograph F 73?

A. I mark it by the letter Red Mt. I make a dot at the highest point of the mountain.

Q. Is that the mountain which you have taken as the northwest corner of this grant?

A. Yes, sir.

Q. On that photograph you can see the tree out in the vicinity of the north center monument?

A. Yes, sir.

Q. I hand you Plaintiffs' Exhibit F 34; will you place a dot and a mark over the point of the Penasco, the point taken by you as the Penasco?

A. I do not think I can see the Penasco here.

Q. Is that it?

A. No, sir; that don't look like it to me; that is a view of the arroyo that runs towards the Penasco.

Q. I show you Plaintiffs' Exhibit F 29; will you put a dot over the point of the Penasco taken by you, if that is a photograph of it?

A. I mark it Penasco.

565 Q. Can you see the Penasco which is represented in that photograph, F 29, in the immediate vicinity of the north center monument, as taken by you?

A. I think I can; yes, sir.

Q. And in looking towards the northwest, does it appear to be on the right or left?

A. It appears on the left.

Q. Is that point marked Penasco, on plaintiffs' Exhibit F 29, the same one represented in plaintiffs' Exhibit F 28?

A. Yes, sir; that is the same Penasco.

Q. And the same one in plaintiffs' Exhibit F 31?

A. Yes, sir; the same.

Q. Just to the left, as it appears in the photograph?

A. Yes, sir.

Q. Is that the same point, also, that is represented in plaintiffs' Exhibit F 30, immediately above the man standing in the foreground of the photograph?

A. Yes, sir; the highest point.

Q. I hand you plaintiffs' Exhibit F 32; will you mark the red mountain in that photograph as it appears?

A. That is the one appearing in the back part of the photograph, the one immediately below the letter R.

Q. Mark the north center monument, if it appears thereon.
A. Marked N. C. M.
Q. Where is the north center monument on that photograph?
A. It is at the foot of that large oak tree, on the left hand of the arroyo which runs towards the Penasco.
Q. Whereabouts would the Penasco be on that photograph?
A. It would be, I think, about an inch in the photograph to the left of the red mountain, marked Penasco.
Q. I hand you another photograph; have you ever observed that natural object it represents?
A. Yes, sir; upon the ground.
Q. What does that represent?
A. It represents Saddle Mountain.
566 Q. The point marked Saddle Mountain on plaintiffs' Exhibit F 52?
A. Yes, sir.
Q. From what direction is that photograph taken?
A. Looking towards the south; that would represent the south side of the mountain.
Q. Will you turn to your notes of your survey at that point and state from your notes what name you then gave to it?
A. In my angular observation made at this monument on September 13th, 1895, I had observed the picacho flag; that was the name goven for this monument.
(We offer this photograph in evidence, plaintiffs' Exhibit F 71.)
Q. Who was with you at this time?
A. Don Elias Concepcion and Enrique Vargarra, and a man named Ramon.
Q. Did you make any note in your notebook?
A. Yes, sir; called Saddle Rock Mountain.
Q. Do you know who told you that?
A. I do not remember exactly who told me; I can not recall who told me that that was the name, Saddle Rock. I have that same mountain in my observations; I had a flag upon it, picacho flag.
Q. I hand you plaintiffs' Exhibit F 70, photograph of the picacho or Saddle Mountain, which is now offered in evidence.
A. It is picacho flag.
Q. Are you familiar with the mountains or hills to which that picacho was applied by the people of Sonora?
A. Yes, sir.
Q. Does that correctly represent what would be called the face of the mountain?
A. That would probably be called by the Mexicans in Sonora a release, and a release always means a bluff; and this right-hand side of the photograph, the upper part of the mountain, to the right of the hole in the top, that looks somewhat like a saddle.
Q. What does the word picacho mean?
A. It means a peak.
567 Q. Would that properly be described as a mountain picacho?
A. Not to my notion; a peak means a sharp mountain ending in a sharp point on the very top of it.

Q. Will you read your observations from the center of the grant as taken by you towards the east center monument?

A. Observation at the center monument September 6th, 1895, is 78 degrees 14′.

Q. Is there anything in your notes in regard to whether the mesa can be seen from the east center monument?

A. The reading itself shows that it can be seen; I had a flag at the east center monument and I observed the course there to be 78 degrees 14′ east.

Q. Now read your observation from the east center monument?

A. To what point?

Q. Towards the center monument?

A. 77 degrees 58′; it appears that where the east center monument is can be seen from the center monument; I had a flag at the center monument at the time I made the observation.

Q. What is your observation from the east center monument to the west center monument?

A. Variation A, 58 degrees 23′; variation B, 78 degrees 23′.

Q. Does that show the hill southwest of El Caloso taken by you as the west center monument as to whether or not it is around or in the center of the monument?

A. To the east of the monument.

Q. Did Mr. Cameron or anybody else point out to you these places?

A. Mr. Cameron was not in the grant at the time they were pointed out to me; not that I remember of.

Q. Had you anyone along with you when you made this survey?

A. Yes, sir; I had some assistants with me.

Q. Any Cameron with you?

A. Yes, sir.

Q. Who?

A. Brewster Cameron, jr., was with me when I measured the
568 base line.

Q. Anyone else?

A. I think that they furnished a cook.

Q. Did Brewster Cameron, jr., point out the mountains to you?

A. No, sir.

Q. Did the cook point out any?

A. No, sir.

Q. Did anybody point them out to you?

A. Yes, sir; the guides I had with me on the survey, people who were supposed to know of it, Elias and Verharra; I had also an old man from Santa Cruz, Don Juan Montoya, who lived there all his life; I also got some information as to points along there from him.

(We offer in evidence the testimony given by Mr. Bonillas on pages 105, 106, and 107 of the record in the Calabasas case merely as to the survey that was made. Plaintiffs' Exhibit 73A.)

Cross-examination by Mr. BARNES:

Q. This bearing from the center monument to the west center monument on El Caloso Hill, is that west of it?

A. It is to the hill southwest of the Caloso which I took as the west center monument.

Q. Was there any artificial monument there?
A. No, sir; there was no monument there; I went to the top of the hill and placed a flag right on the summit.
Q. No monument there?
A. No.
Q. Is there a picacho?
A. No, sir.
Q. Is that called by the Mexican people a picacho?
A. No, sir; a picacho is a mountain peak, or a high hill ending in a sharp point.
Q. What is a picacho?
A. It is a hill that has such a point, the apex.
Q. Its sharp point is what gives it that characteristic?
A. Yes, sir.

Q. Now, the words carricillo and carricito, you said they are
569 used as the diminutive of carrizo?

A. Yes, sir.
Q. Very often a term of endearment, is it?
A. Yes, sir.
Q. Very often the word termination illo is very often used for a contemptuous expression?
A. Yes, sir; there is that distinction between the two words; you never hear of the ito being used as an expression of contempt.

Redirect examination by Mr. HENEY:

Q. Were there two kinds of that reed, as to size?
A. Yes, sir; its habitat is warm places, and where it grows in cold places it does not attain its full growth—it remains small and slender. That is called carricito.
Q. Do you know whether you took an observation from the red mountain to the east center monument?
A. No, sir.

GEORGE J. ROSKRUGE recalled for the plaintiffs by Mr. Heney:

Q. Why did you mark that peak Saddle Mountain on your map?
A. I marked that peak Saddle Mountain from a map that I think is in testimony. I would like to say that I made a mistake in it; this looks like the one I was testifying to. I testified under the impression that it was Saddle Mountain instead of Saddle Rock. Mr. Allis has Saddle Rock instead of Saddle Mountain, and I was under that impression for years, I think.
Q. Have you ever been to the southeast corner of this grant, as taken by Mr. Bonillas?
A. I could not say, because I never was with Mr. Bonillas to know.
Q. Did you ever go there with anybody that told you it was pointed out and taken by Mr. Bonillas?
A. No, sir.

Q. In '87, when you were making that survey, did you go to
570 the southeast corner monument?

A. I went on the tract, and also to this corner.
Q. Did you go where these dotted lines are?

A. I was satisfied that was the southeast corner monument of the grant, according to the calls of the expediente.

Q. Did you go down there?

A. Yes, sir.

Q. Who went with you?

A. Mr. Brewster Cameron and Mr. Buchmann and Mr. Cameron's son, and whole lot of men.

Q. Did you build that southeast corner monument at that time?

A. No, sir.

Q. Did you find any there?

A. Yes, sir.

Q. What sort of a looking monument was it?

A. I could not tell you exactly from recollection.

Q. Did Mr. Cameron and Mr. Buchmann leave there with you?

A. That I could not tell; I think I was on horseback.

Q. Did you ride in a wagon with rocks and put them on the place where the monument is?

A. No, sir; I did not.

Q. You did not build up any monuments?

A. No, sir; I was to go and locate these corners of this grant, if I could find them, so that they might be identified.

Cross-examination by Mr. POPE:

Q. Was Mr. Colin Cameron with you when you went to that southeast monument?

A. I do not remember. Mr. Brewster Cameron was; I remember him. I do not recollect Mr. Colin Cameron on that trip.

Q. Do you not think he was ever at the southeast corner with you?

A. I could not be sure; I do not remember of his being there. I recollect Mr. Brewster Cameron and his son, but I do not recollect seeing Mr. Colin Cameron.

571 Q. You rode horseback?

A. Yes, sir.

Q. Who got to this southeast corner first—the wagons, or you yourself on horseback; or how was that?

A. I presume I got there first on horseback; we went together.

Q. You swear positively that you and the wagons got there at exactly the same time?

A. That is my belief and opinion.

Q. You might be mistaken?

A. I do not think I am.

Q. You can not tell now?

A. I was on horseback, and I recollect distinctly I saw the wagons there at this corner.

Mr. HENEY:

Q. You did not build any monument while you were there?

A. No, sir.

Q. If they built any monument they built it before you got there?

A. Considerable time before I got there; it was an old monument when I got there.

WALTER E. MURPHY, sworn on the part of the plaintiffs, testified upon direct examination by Mr. Heney as follows:

Q. What is your business?
A. I am chief clerk in the surveyor-general's office of this Territory.
Q. Is that a certified copy and tracing of the plat that is in your office—surveyor-general's office?
A. It is.
(We offer in evidence this certified copy of the Allis survey made in 1880. Plaintiffs' Exhibit F 74.)

Mr. BARNES:

Q. Is that a correct tracing of that map?
A. Yes, sir; it was my purpose to do so. I did not make it; one of the draughtsmen did.
Q. And you think this is all right?
A. Yes, sir.

Mr. HENEY:

572 Q. Have you the field notes in relation to the Allis survey?
A. I have.
Q. Will you turn to his observations, to the point marked Saddle Rock, and read them?
A. Post S. R. Z. to Saddle Rock; I think I have; No. 6 bears north 47 degrees west; big oak tree on top of round hill bears north 54 degrees east; from corner No. 7, northeast corner of the grant, I set a post marked S. R. Z. No. 7 bears north 63 degrees 30′ west; oak tree on round hill bears north 32 degrees east; highest point of the Huachucas bears south 74 degrees 20′ east; an oak tree blazed bears north 86 degrees 20′ east; distance, 5.82 chains; an oak tree blazed 18 inches bears north 27 degrees west; distance 4.61 chains.
Q. Do these notes state when they were made?
A. Commenced May 22nd, 1880.

GEORGE J. ROSKRUGE recalled by the plaintiffs, by Mr. Heney:

Q. Is the point marked Saddle Mountain on your map, plaintiffs' Exhibit F 52, the same point marked Saddle Rock on the Allis map, plaintiffs' Exhibit F 74?
A. That is my belief.

YGNACIO BONILLAS recalled by the plaintiffs, by Mr. Heney:

Q. Did you confer with Mr. Roskruge before you commenced this survey?
A. No, sir; not at all.
Q. Had you seen his field notes or plat before making your survey?
A. No, sir; it was after I had made the survey that I saw this map here.

Cross-examination by Mr. POPE:

Q. Before you made your plat, did you see Mr. Roskruge's survey, or plat, or map?
A. No, sir; I saw this map when I was making my calculations after

I had gathered all the data in the field for my record and map; while I was making my trigonometrical calculations.

573 (We offer in evidence deed dated October 16, 1882, from Enrique Bergara and his wife to Dorotea and Juan Telles and his wife and Miguel Siguerrez and his wife, of Santa Cruz, Sonora, Mexico, to Roland R. Richardson. Plaintiffs' Exhibit F 75.

We next offer in evidence deed from Louis Boliva to A. A. Green and R. R. Richardson in Spanish, recorded in the office of the recorder of Pima County, Arizona, at the request of R. R. Richardson, December 17, 1881, in Book 11, pages 12 and 13. Plaintiffs' Exhibit F 76.

We now offer in evidence deed from Dolores Osuna and Alejandre Apodaca to A. A. Green and R. R. Richardson, being deed to property and houses in San Rafael Ranch, in Spanish, recorded in the office of the recorder of Pima County, Arizona, at the request of R. R. Richardson, December 17th, 1881, in Book 11, pages 13 and 14. Plaintiffs' Exhibit F 77.

We also offer in evidence original letter from J. M. M. to Ramon Romero, dated January 16, 1831. Plaintiffs' Exhibit F 78.)

MAY 24TH, 1899—10 a. m.

HENRY BUEHMAN recalled for the plaintiffs by Mr. Heney:

Q. I hand you plaintiffs' Exhibit F 71; did you ever see that photograph before?

A. Yes, sir.

Q. Who took that photograph?

A. I did.

Q. On the ground?

A. On the ground; yes, sir.

Q. Do you know what it is a photograph of?

A. If I am not mistaken it is a photograph of Saddle Mountain.

Q. Do you know from what direction?

A. No, sir.

Q. How long since you have been there?

A. 11 or 12 years.

574 Q. I hand you plaintiffs' Exhibit F 70; did you take that photograph?

A. Yes, sir.

Q. When?

A. I could not say for certain.

Q. Did you take it on the ground?

A. Yes, sir.

Q. I hand you plaintiffs' Exhibit F 42; do you know that photograph?

A. I could not say.

Q. That is the east center monument of the grant?

A. Yes, sir.

Q. Did you get there as soon as the first of the party?

A. If I am not mistaken we waited for the surveyor, Mr. Roskruge.

Q. After you got there?

A. Yes, sir.

Q. Did you get there with the first of the party to get there?

A. Yes, sir.

Q. What did you find there?
A. We found this monument there.
Q. Was it built after you got there?
A. No, sir.
Q. What was the appearance when you first saw the monument?
A. They were old monuments at that time.
Q. Did you see any monuments built there that day?
A. No, sir; nor any other day.
Q. You did not see any monuments built anywhere?
A. No, sir.

Cross-examination by Mr. POPE:

Q. From what direction was this photograph, plaintiffs' Exhibit F 70, taken?
A. That I could not say; these photographs were taken ten or 12 years ago.
Q. You have not thought about these matters until the present term of this court?
A. No, sir; I recollect very well the taking of the photographs; I know my work; I can pick it out of a thousand; it is taken from this hill that runs up here; it is taken from the hill that is adjacent to the object.
375 Q. But you do not know the direction from which it was taken?
A. No, sir.

GEORGE J. ROSKRUGE recalled for the plaintiffs by Mr. Heney:

Q. I hand you plaintiff's Exhibit F, 68 together with another letter; did you ever see these letters before?
A. Yes, sir.
Q. When did you see them?
A. I saw these letters in April, 1883.
Q. How did you get them?
A. They were sent to me by Mr. Colin Cameron; I got them from the mail.
Q. Do you identify the handwriting of each of these letters?
A. Yes, sir; R. R. Richardson on plaintiffs' Exhibit F 68 and Colin Cameron on this letter.

(We offer this letter in evidence, dated April 3, '83. Plaintiffs' Exhibit F 79.

Objection is irrelevant, immaterial, and incompetent, and being the declarations of the party in interest in his own behalf, and is purely hearsay.

We now offer in evidence a certified copy of a deed from R. R. Richardson to Colin Cameron for the same property described in the deeds from Borgara and wife, Juan Telles and wife, and Aliguel Siguerra and wife. Plaintiffs' Exhibit F 80.

Objection is irrelevant and incompetent.)

COLIN CAMERON recalled for the plaintiffs by Mr. Heney:

Q. Did you hear the testimony of Mr. Chalmers in this case?
A. I did.

Q. Is there any permanent water at the places or springs named by him on any part of what would be the southwest quarter of this grant if divided into quarters, taking the entire tract as surveyed by Mr. Bonillas?

A. No permanent water there for cattle; none.

Q. In which direction do the cattle go for water from those points over there in the Patagonia Mountains around by Washington Camp?

576 A. They come to the valley.

Q. To the Santa Cruz Valley?

A. Yes, sir.

Q. Was there permanent water up in that country when you first went in?

A. Not that I know of.

Q. Was there any water running by Washington Camp?

A. Yes, sir; there was water certain seasons of the year.

Q. Was there any permanent water up by the Duquesne mines?

A. No, sir; I do not think there was; I have seen them try to develop at Washington Camp to get permanent water, but they could not; that is, I mean permanent running water.

Q. Is there permanent water at any one of the places named by him?

A. No, sir.

Q. Was there when you first went there?

A. No, sir.

Q. Is there in that canon that runs down and comes out right at La Noria from Washington Camp?

A. No; no permanent water.

Q. At the time the Duquesne mines were originally acquired from A. A. Green they relocated these mines, did they not?

A. I do not know who relocated them; they sold them to the Duquesne people; A. A. Green gave title to the Duquesne people.

Q. What is the amount of money you have expended in stocking and improving this ranch since you have purchased it?

A. In purchasing, stocking and improving, over five hundred thousand dollars.

Cross-examination by Mr. POPE:

Q. You were asked on your former examination about a survey made by Mr. McLaughlin?

A. Yes, sir.

Q. Was or was not Mr. McLaughlin employed by you to make that survey?

A. No; he was not; that is answering the question directly; I would like to make an explanation.

577 Q. Did you pay him for making this survey?

A. No, sir; I would like to explain that, too.

Q. You said in your former examination something about his having made this survey in connection with the location of that meridian down there?

A. Yes, sir.

Q. Was this survey of Mr. McLaughlin's in connection with that?

A. That is what he told me.

Q. Didn't he make a survey for you and did you not pay him for a survey?

A. No, sir; I will explain it.

Q. Well, go ahead.

A. Mr. McLaughlin came to the San Rafael ranch and asked me about the—that he wanted to determine where the north boundary line was, because at that time he was uncertain whether he would be paid, and I went there and showed it to him; he ran a line west until he came to his line; then we stopped there for a day and perhaps more; then he told me that the men, chainmen and markers, had been laid off, did not get wages, but that if I would agree to pay them he would continue to run the line. I agreed to pay the workmen and would furnish the meals for the men at the time.

Q. You went around with him?

A. Yes, sir.

Q. To all the different points?

A. Yes, sir.

Q. You went to all that you knew with him?

A. Yes, sir; that is my recollection of it now.

Q. Did you take Mr. McLaughlin out there for the purpose of making this survey?

A. No, sir.

578 Q. You testified in regard to these facts in the case of Colin Cameron *vs.* The United States, in 1887, did you not?

A. I do not know.

Q. You testified in that case?

A. I think so.

Q. In that case upon cross-examination did you not testify as follows: "I simply placed the cattle on the land, and employees to take care of them. I had no surveyor with me when I was riding around, but I immediately took one out, and with the expediente we located the grant before I bought it. He was a government surveyor of the United States—a deputy—and I had the lines run to know exactly what was there and where they were. J. B. McLaughlin, I think, was his name. He went at my expense only. I paid him for it myself. He was not sent there by the order of any person, but we went to locate the ground so that I myself would know where the lines were." Did you not so testify upon that occasion?

A. Yes, sir; if it is there, I did.

Q. If you did so state it, it is the truth, is it?

A. Yes, sir.

Mr. POPE. We offer in evidence that portion of Mr. Colin Cameron's evidence marked in lead pencil lines, found on page 61 of the printed transcript of the case of Colin Cameron *vs.* The United States, Supreme Court of the United States, October term, 1889, appeal from the supreme court of the Territory of Arizona. (Defendant's Exhibit No. 23).

579 Mr. HENEY. I offer in evidence the evidence of on page 105 of the transcript in case of vs. . (Plaintiffs' Exhibit F 81.)

(Objection to this because it is immaterial, irrelevant, and incompetent and secondary evidence, and having no bearing on this case whatever.)

CONCEPCION ELIAS recalled for the plaintiffs by Mr. Heney:

Q. Do you know the place called Coches on the San Rafael grant?

A. Yes, sir.

Q. In early days, do you know anything about cattle being rounded up in that vicinity; and if so, what?

A. They used to hold round-ups at that place, the people from Babocomari and from Santa Cruz.

Q. What did they do with the cattle?

A. The cattle of the Babocomari people they used to take towards the Babocomari and the cattle of the Santa Cruz people they used to leave in the land.

Q. Did you ever see any carricitos growing at Igo's spring where Igo lives now?

A. It is a very old spring; it is much larger now because they cleaned it out.

Q. Did you ever see any of the reed called carricito growing there at any time?

A. There was small cane around the spring, not of the large cane, but of the small cane from which the Apache Indians used to make arrows.

Q. Was that there when you first knew the spring?

A. Yes, sir; there was cane before the ranch was established there.

Q. Do you know whether Ramon Romero was a Mexican citizen or not?

A. He was nothing but a Mexican citizen.

Q. That is the Ramon Romero to whom this grant was sold
580 by the Mexican Government?

A. Ramon Romero and the inhabitants of the town was there when the trail from Santa Cruz that went towards the El Carricito spring in early days; there was a very well-traveled road by the people and by the Indians.

Q. Where did the trail go to with reference to the end of the mountain?

A. Towards the San Pedro Valley; along that valley. We used to follow that trail in following the Indians.

Q. Was the presidio of Santa Cruz ever over in that direction?

A. It was probably towards the end of the last century. I know where the presidio of Santa Cruz was situated in the San Pedro Valley at a place called San Pedro Viejo, meaning Old San Pedro.

Q. Is that the place now known as Fairbanks?

A. Yes, sir; San Pedro Viejo is near Fairbanks; the old walls are still standing on the top of the hill—of the mesa.

Cross-examination by Mr. POPE:

Q. These canes which you call carricitos grow around springs, do they not?

A. There were some around the water spring; at the present time there are none because they cleaned the place and made it larger.

Q. Then the cattle eat this too, do they not?

A. Yes, sir; they eat it.

Q. And before cattle went into that country there were carricitos around all of the springs, were there not?

A. You mean at the same water spring; at all the water springs

before the cattle came in? A. No; there were none except at that place.

Q. You never saw them at any other place, then?

A. No, sir.

Q. There may have been carricitos at other places and you may not have seen them?

A. I did not see any at other places.

581 Q. You know the Encinitos tract?

A. In what direction?

Q. There near Lochiel on the Mexican side.

A. Yes, sir; it was a ranch that I myself denounced at Encinitos.

(Objection to this as not cross-examination; we have no objection to your making him your witness.)

Q. That is at the edge of the boundary line?

A. Yes, sir.

Adjourned until to-morrow.

MAY 25th, 1899, 10 a. m.

Mr. POPE. We offer in evidence that part of Mr. Bonillas' testimony in the Calabasas case found on pages 121 and 122 of the printed transcript in that case. (Defendant's Exhibit No. 23 A.)

SANTA FE, NEW MEXICO, *August 12th, 1899.*

I hereby certify that the above and foregoing 441 pages contain a full, true, and correct transcript of all the testimony in the above-entitled case.

W. J. MCPHERSON,
Official Stenographer.

582 F. 11.

Conste por la presente escritura hecha hoy dia 28, del mes de marzo, de mil ochocientos ochenta y cinco entre el Senor Andres Montiel, el Senor Jose Mana Lopez y el Senor Angle Leon, los Comisionados debidamente electos para actuar, como queda expresado en el adjunto certificado por el pueblo de Santa Cruz en el Estado de Sonora, Republica de Mexico, por una parte y Senor Brewster Cameron, de Tueson, Pima County, Arizona, por la parte de la segunda parte, que las dichas partes de la primera parte, en consideracion de la suma de diez mil ($10,000.00) pesos, moneda legal de los Estados Unidos de America, cuya cantidad ha sido pagada a las partes de la primera parte por la parte de la segunda parte, acusando las dichas partes de la primera parte recibo de la mencionada suma, por la presente escritura ceden, traspasan, enagenan y confirman a dicha parte de la segunda parte y a sus herederos y representantes para siempre todo el titulo, derecho, parte reclamacion y demanda de cualquierra clase que sea y, que por la ley y la equidad tengan en toda o en cualquiera de sus partes de cierta merced de terreno Espanola o Mexicana, conocida con el nombre del Rancho de San Rafael de la Zanja, conforme a las medidas, linderos y mohoneras segun consta en el Expediente original, por el cual se cede dicha merced a Ramon Romero y los Vecinos del Pueblo de Santa Cruz, con fecha 15 de mayo de 1825 y de

cuyo Expediente existe una copia en los Archivos de la oficina del Agrimensor General del Territorio de Arizona y el cual forma parte de este traspaso con el fin de dar una descripcion mas completa de los terrenos aqui cedidos y trespasados, salvo y a eescepcion de toda aquella parte de dicha merced sita y ubicada en el Estado de Sonora, Republica de Mexico.

Junto con todos las pertenencias, tenencias y heredades que le pertenezcan o formen parte de ella y las rentas, productos y ganancias de ella.

Para que goce y disfrute de dicha propriedad y de todas sus partes, la mencionada parte de la segunda parte para si y para sus herederos y representantes para siempre.

Y dichas partes de la primera parte prometen garantizar y defendar a la parte de la segunda parte contra toda persona o personas que reclamen legitamente e algun derecho en dicha propiedad asegurando a la parte de la segunda parte la ocupacion quieta y pacifica en dicha propiedad.

En fe de le cual, las partes de la primera parte han puesto aqui su mano y sello el dia mes y ano arriba citados.

ANDRES MONTIEL, [SEAL.]
Commision.
JOSE MA. LOPEZ, [SEAL.]
Commision.
ANGEL LEON, [SEAL.]
Comision.

Firmado, sellado y entregado en presencia de—
LEWIS WOLFLEY.
A. AGUIRRE.

SANTA CRUZ, SONORA, MEXICO,
Marzo 28 de 1885.

Yo, Miguel Signeiros certifico que Andres Montiel y Jose Maria Lopez y Angel Leon fueron debidamente electos Comisionados para los fines expresados en el anterior documento y que he aprobado su acto como alli queda expresado.

MIGUEL SIGNEIROS, [SEAL.]
Presidente de Santa Cruz,
Estado de Sonora, Republica de Mexico.

UNITED STATES CONSULATE, NOGALES, MEX.,
Post-office address, Nogales, Arizona, 28 March, 1885.

This day personally appeared before me, F. H. Goodwin, consular agent of the United States, at Nogales, Mexico, Andres
583 Montiel, Jose Ma. Lopez, and Angel Leon, citizens of the State of Sonora, Republic of Mexico, personally known to me, and acknowledged that the foregoing conveyance made to Brewster Cameron, of the Territory of Arizona, in the United States of America, was their free and voluntary act and deed for the purposes therein mentioned.

In witness whereof I hereto sign my name and affix my seal of office at Nogales, Mexico, this 28th March, 1885.

[SEAL.] F. H. GOODWIN,
U. S. Consular Agent.

LOCHIEL P. O., PIMA COUNTY, ARIZONA.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this thirtieth day of March, A. D. one thousand eight hundred and eighty-five, before me, Lewis Wolfley, a notary public in and for the county of Pima, Arizona, personally appeared Miguel Siguiros, Angel Leon, Jose Maria Lopez, and Andres Montiel and Albino Aguirre, as principals and witnesses, whose names are subscribed to the annexed instrument as the parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as the parties thereto, and who duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] LEWIS WOLFLEY,
Notary Public, Pima County, Arizona.

Recorder's office, Pima Co., A. T. Filed and recorded at request of Lewis Wolfley 13th April, A. D. 1885, at 1.55 p. m. Book 13, Deeds of Real Estate, pages 46, 47, and 48. A. B. Sampson, county recorder. (Endorsed:) Plaintiff's E. F. 11 & 12.

584 F 12.

This indenture, made the 28th day of March, in the year of our Lord, one thousand eight hundred and eighty-five, between Andres Montiel and Jose Maria Lopez and Angel Leon, commissioners duly elected to act, as set forth in the accompanying certificate, for the town of Santa Cruz, State of Sonora, Republic of Mexico, the parties of the first part, and Brewster Cameron, of Tucson, Pima County, Arizona, the party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of ten thousand ($10,000) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part and to his heirs and assigns forever all the right, title, and interest, claim and demand of every kind whatsoever, as well in law as in equity, in and to all that portion of that certain Spanish or Mexican land grant known as Rancho de San Rafael de la Zanja, according to the surveys, monuments, and boundaries, as the same appear from the original expediente, granting said grant, San Rafael de la Zanja, by the Mexican Government to Ramon Romero and the citizens of Santa Cruz, dated May 15, 1825, a copy of which said expediente is now on file in the office of the United States surveyor-general of the Territory of Arizona, and which is hereby made a part of this deed for the purpose of furnishing a more complete description of the lands hereby granted and conveyed, saving and excepting all that portion of said grant lying, being, and situate in the State of Sonora, Republic of Mexico; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the rent, issues, and profits thereof.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever. And the said parties of the first part and their heirs shall and will warrant, and by these presents forever defend the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ANDRES MONTIEL, [SEAL.]
Comision.
JOSE MA. LOPEZ, [SEAL.]
Comision.
ANGEL LEON, [SEAL.]
Comision.

Signed, sealed, and delivered in the presence of—
A. AGUIRRE,
LOUIS WOLFLEY.

SANTA CRUZ, SONORA, MEXICO, *March 28th, 1885.*

I, Miguel Siqueiros, do certify that Andres Montiel, Jose Maria
585 Lopez, and Angel Leon were duly elected commissioners for the purposes expressed in the foregoing document, and I hereby approve their action as therein expressed.

(Ayuntamiento de Santa Cruz.)

MIGUEL SIQUEIROS, [SEAL.]
President of Santa Cruz.

REPUBLIC OF MEXICO, STATE OF SONORA,
U. S. CONSULATE, NOGALES, MEX.,
Post-office address Nogales, Ariz., 28th March, 1885.

This day personally appeared before me, F. H. Goodwin, consular agent of the United States at Nogales, Mexico, Andres Montiel, Jose Ma. Lopez, and Angel Leon, citizens of the State of Sonora, Republic of Mexico, personally known to me, and acknowledged that the foregoing conveyance made to Brewster Cameron, of the Territory of Arizona, in the United States of America, was their free and voluntary act and deed for the purposes therein mentioned.

In witness whereof I hereto sign my name and affix my seal of office, at Nogales, Mexico, this 28th March, 1885.

[SEAL.] F. H. GOODWIN,
U. S. Consular Agent.

LOCHIEL P. O., PIMA COUNTY, ARIZONA.

TERRITORY OF ARIZONA, *County of Pima, ss:*

On this thirtieth day of March, A. D. one thousand eight hundred and eighty-five, before me, Lewis Wolfley, a notary public in and for the county of Pima, Arizona, personally appeared Miguel Siqueiros, Angel Leon, Jose Maria Lopez, and Andres Montiel, and Albino Aguirre as

principals and witnesses, whose names are subscribed to the annexed instrument as the parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as parties thereto, and who duly acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.] LEWIS WOLFLEY,
Notary Public, Pima Co., Arizona.

Filed and recorded at request of Lewis Wolfley, 13th April, A. D. 1885, at 1.45 p. m. A. B. Samson, County Recorder.

(Indorsed:) Plaintiff's Ex. F. 11 and 12.

586 F 13.

This indenture, made the fourth day of January, in the year of our Lord one thousand eight hundred and eighty-eight, between John S. Wood, treasurer and ex officio tax collecter of the county of Pima, Territory of Arizona, part of the first part, and Robert H. Payne, the party of the second part, witnesseth, that whereas Thos. Hughes, treasurer and ex officio tax collector of said county, did by virtue of the provisions of an act of the legislature of the Territory of Arizona, entitled "An act amendatory to Chapter XXXIII of compiled laws of Arizona Territory, to provide revenue for the Territory of Arizona and the several counties thereof; approved April 12, 1875," approved March 10, 1881, as such tax collecter, heretofore and at the time hereinafter mentioned, to wit, on the third Monday of December, 1886, at the close of his official business on that day, enter upon the duplicate assessment roll a statement that he had made a levy upon all property therein assessed the taxes upon which had not been paid, and did immediately ascertain the total amount of taxes then delinquent, and file in the office of the treasurer of said county a statement of said amount verified by him, and did make out a list of all persons and property then owing taxes in said county to the Territory of Arizona, and to the county of Pima, together with the costs and charges due thereon, which said list was duly verified by him and was completed by the last day of December, 1886, and did include the property hereinafter described. That said property was assessed for the fiscal year commencing on first Monday in March, 1886, for Territorial and county taxes, at $59,000, to A. A. Greene. That the property assessed, situated, lying, and being within the county of Pima, and described thus: Mortgage line on San Rafael de la Zanja ranch, was on the 7th day of March, 1887, in accordance with law, offered for sale to pay said taxes and costs, at public auction, in front of the county court house in said county. That on the day said property was first offered for sale at said auction, Robert H. Payne (of St. Louis, Missouri) was the purchaser who was willing to take the least quantity or smallest portion of the interest in said property, and pay the taxes, percentage, and cost. That the least quantity or smallest portion of the interest in said property accepted by said Robert H. Payne for the taxes, percentage,

and costs is described as follows, to wit: All of the aforesaid mortgage line on the San Ranfael de la Zanja ranch. That the said Robert H. Payne having paid fourteen hundred and eighty-two ninety hundreths ($1,482 90/100) dollars, the full amount of said taxes, percentage, and costs (including $1.00 for certificate of sale and eighty cents for filing same), was declared the purchaser pursuant to law of the said described piece or parcel of land, so sold as aforesaid, for said taxes, percentage, and costs, and that the said real estate was sold subject to redemption, pursuant to the statute in such cases made and provided, and that unless redeemed within six months from the date of said purchase, said purchaser would be entitled to a deed at the expiration of six months from date of sale.

Whereupon the said treasurer and ex officio tax collecter delivered to the purchaser a certificate of said sale as is by law directed to be given, and a duplicate of such certificate was duly filed by the said treasurer and ex officio tax collector in the office of the recorder of the said county of Pima. And

Whereas six months after said sale have expired without any redemption of the said premises having been made,

Now this indenture witnesseth that the said John S. Wood, as treasurer and ex officio tax collector aforesaid, by virtue of and in pursuance of the statutes in such cases made and provided, for and in consideration of the premises and of the sum of money paid to said treasurer and ex officio tax collectors, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said Robert H. Payne, the second party hereto, and to his heirs, successors, and assigns forever, all the right, title, interest, and claim which the said A. A. Greene had on the said first day of March, 1886, in
587 and to all that certain property situate, lying, and being in the said county of Pima, Territory of Arizona, as hereinbefore particularly described.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the said premises, with the appurtenances, unto the said party of the second part, his successors and assigns forever, as fully and absolutely as the said treasurer and ex officio tax collector can, may, or ought to, by virtue of the provisions of the said act of the legislature in such cases made and provided, grant, bargain, sell, convey, and confirm the same.

In witness whereof the said treasurer and ex officio tax collector, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

J. S. WOOD, [SEAL.]
Treasurer and Ex Officio Tax Collector of Pima County, Arizona.

Signed, sealed, and delivered in the presence of—
G. BEN HENEY.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 4th day of January, A. D. 1888, personally appeared before me, a notary public in and for said Pima County, the within-named John

S. Wood, treasurer and ex officio tax collector of the county of Pima, Territory of Arizona, personally known to me to be the same person whose name is subscribed to the within instrument, and acknowledge to me that he, as such treasurer and ex officio tax collector of said Pima County, executed the same, freely and voluntarily, and for the uses, considerations, and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my seal of my office, in the said county of Pima, Territory of Arizona, the day and year in this certificate first above written.

WILLIAM T. OSBORN,
Notary Public.

Recorder's office, Tucson, Pima County, A. T. Filed and recorded at request of S. M. Franklin, 4th January, A. D. 1888, at 3 p. m., Book 14, Deeds of Real Estate, pages 448 to 451, inclusive. A. B. Sampson, county recorder.

(Endorsed:) Plaintiff's Ex. F. 13.

588 F 14.

This indenture, made the 23rd day of January, in the year of our Lord one thousand eight hundred and ninety-eight, between John S. Wood, treasurer and ex officio tax collector of the county of Pima, Territory of Arizona, the party of the first part, and Alexander M. Fulford, the party of the second part, witnesseth: That whereas Thomas Hughes, treasurer and ex officio tax collector of said county, did, by virtue of the provisions of an act of the legislature of the Territory of Arizona entitled "An act amendatory to Chapter XXXIII of complied laws of Arizona Territory, to provide revenue for the Territory of Arizona and the several counties thereof, approved April 12, 1875," approved March 10, 1881, as such tax collector, heretofore and at the time herein mentioned, to wit, on the third Monday of December, 1886, at the close of his official business on that day, enter upon the duplicate assessment roll a statement that he had made a levy upon all property therein assessed, the taxes upon which had not been paid, and did immediately ascertain the total amount of taxes then delinquent and file in the office of the treasurer of said county a statement of such amount verified by him, and did make out a list of all persons and property then owing taxes in said county to the Territory of Arizona and to the county of Pima, together with the costs and charges due thereon, which said list was duly verified by him, and was completed by the last day of December, 1886, and did include the property hereinafter described; that said property was assessed for the fiscal year commencing on the first Monday in March, 1886, for Territorial and county taxes, at $10,000.00 to—

589 Albino Aguirre, Antonio Acuna, Soledad M. de Asedo, Jesus Ballesteros, Florencio Dominguez, Juan Dominguez, Jesus Dominguez, Abundio Elias, Pedro Espinoso, Antonio Gonzales, jr., Leonardo Gonzales, Macedonio Gonzales, Eduardo Gracia, Atancio Hernandez, E. Garcia, Miguel Sigueiros, Jose Figueroa, Joaquin Figueroa, Dolores Acedo de Bergera, Esmerijilda Ruis de Thompson, Franco B. de Topia, Urbana U. de Sandoval, Felipe Ruis, Jesus Romero, Juan Romero, Quirino

Eangel, Decidino Osuna, Magdalena Gonzales, Angel Lopez, Juna Lopez, Juan Diego Lopez, Petra Sevas, Juan Espinoza, Renino Gonzales, Macedonia Gonzales, Diega Sanches de Dominguez, Ramon Palomares, Antonio Balardes, Bentura M. de Barios, Rosalio Barios, jr., Dodolores de Apodaca, Matio Arviso, Joaquin Zepeda, Francisco Zapeda, Josefa Telles, Macedonio Gonzales, Encarnaceon Tayles de Telles, Miguel Segueiros, Luis Salgado, Bictor Ruis, Nabor Ruis, Cayetana G. de Ruis, Navor Rodrigues, Nemecio Quijoda, Antonio Ortega, Manuel Neira, Miguel Montiel, Luis Montiel, Juna Pablo Montiel, Lucio Montiel, Ysidro Montiel, Guillermo Montiel, Juan Montiel, Andres Montiel, Jose Maria Lopez, Andres Lopez, Angel Leon, Pedro Juvera, Merejildo Montoya, Balerio Montoya, Jose Maria Montoya, Anita Montoya, Jose Maria Montoya, jr., Ramon Montoya, Feliciano Montoya, Joaquin Montoya, Adolfo Montoya, Dionicio Montoya, Nicolas Montoya and Maria Montoya, Seberiana Fraijo, Juna Ramos, Gregorio Fraijo and Dolores Fraijo, Victoria Ramos, Leonardo Ramos and Bisenta Ramos, Pedro Michelena, Trinidad Michelena, Jose Maria Michelena, Pedro Michelena, jr., Umesiada Michelena, Manuela Michelena and Jose Maria Michelena, jr., Juana Ortega, Jesus Ortega, Juan de Dios Ortega and Antonio Ortega, Soledad Gonzales, Encarnacion Gonzales, and Tiodora Gonzales, Ramona Orta, Jose Orta and Josefa Orta, Jose Fraijo, Pablo Fraijo, Juan Fraijo, Gregorio Fraijo, Jesus Fraijo, Josefa Fraijo and Lachina Fraijo, Santaigo Fraijo, Espiradion Fraijo, Pablo Fraijo, Calletano Fraijo, Dolores Bonias, Jose Montiel, Jose Ramon Montiel, Ysidoro Montiel, Juna Montiel, Josefa Montiel, Rafael Montiel, Luis Montiel, Gregoria Montiel, Simona Montiel, Alejandra Montiel and Bentura Montiel, Paulina Montiel, Miguel Montiel, Carlos Montiel and Mesados Montiel, Juan Pablo Montiel, Andres Montiel, Miguel Montiel, Guillermo Montiel, Lusio Montiel, Felipa Montiel and Yuginia Montiel, Rosalia Marquez, Estefano Montiel, Leandra Franco, Alejandra Franco, Jesus Franco, Aldifonso Marquez, Ysidora Marquez, Tula Marquez, Silberia Marquez, Agapito Franco, Josefa Franco, Santas Usarraga, Noberto Usarraga, Ygnasio Usarraga, Nicolas Usarraga, Eligio Usarraga, Usbana Usarraga, Tula Usarraga, Bentura Usarraga, Umesinda Usarraga, Candelaria Trejo, Rosa Trejo, Francisca Trejo, Leonarda Trejo, Carmen Camarga, Gregorio Camarga, Francisco Camarga, Juana Camarga, Francisco Sandoval, Francisco Sandoval, jr., Lucas Sandoval, Candido Sandoval, Christina Sandoval, Manuel Barrios, Manuel Barrios, jr., Josefa Barrios, Refugia Barrios, Anita Barrios, Jose Ave, Jose Maria Bedolla, Antonio Bedolla, Antonio Bedolla, jr., Jose Maria Bedolla, jr., Guadalupe Bedolla, Juana Bedolla, Josefa Cruz, Tula Soto, Francisca Tapia, Felecciano Bedolla, Refugio Bedolla, Dyoneeio Bedolla, Geronimo Bellardes, Josefa Freijo, Jesus Freijo, Maria Freijo, Ysabel Freijo, Ysabel Granillo, Luis Granillo, Alejandro Granillo, Angela Granillo, Antonio Freijo, Nabor Freijo, Reinaldo Freijo, Maria Freijo, Francisca Freijo, Francisco Freijo, Francisco Duran, Paulino Duran, Alejandro Franco, Juan Franco, Agapito Franco, Barbara Mongui, Josefa Franco, Alferas Joaquin Limon, Jesus Limon, Luis Limon, Carmen Limon, Capitan Antonio Leon, Fl'rentine Leon, Angel Leon, Blasa Pinera, Ygnacio Elias, Tiofila Apodaco, Leonardo Apodaca, Faustiena Apodaca, Pedro Lopez, Opomuceno Lopez, Antonio Lopez, Clementa Lopez, Damiana

Lopez, Encarnaceon Lopez, Melitona Lopez, Feliz Lopez, Silicia Lopez, Gabriel Lopez, Ramon Lopez, Ynes Lopez, Victorio Lopez, Leandro Lopez, Relles Grijalva, Andres Grijalva, Domingo Grijalva, Tarivio Lopez, Juan Lopez, Eujenio Lopez, Guillermo Lopez, Solana Lara, Sacramenta Lara, Bruno Lara, Eduardo Lara, Elena Lara, Petra Lopez, Valentine Montana, Asebero Montana, Eujenia Sebastian Montana, Jesus Montana, Jose Maria Montana, Mariana Montana, Francisca Montana, Jose Antonio Ruiz, Alberto Ruiz, Feliz Ruiz, Nabor Ruiz, Felipe Ruiz, Victor Ruiz, Gaudaloupe Juvera, Juana Ruiz, Rita Elias, Dimas Ruiz, Mariano Usarraga, Noberto Usarraga, Ygnacio Usarraga, Nicolas Usarraga, Angel Usarraga, Eligio Usarraga, Urbano Usarraga, Ygnacio Usarraga, Tula Dominquez, Francisco Dominquez, Bentura Leon, Asencion Leon, Feliz Leon, Angel Leon, Angela Leon, Umesinda Lopez, Santos Lopez, Maria Lopez, Guadaloupe Lopez, Urbana Lopez, Francisco Lopez, Miguel Ysalva, Maximo Yslava, Jose Yslava, Jesus Yslava, Manuel Yslava, Jesus Yslava, Francisco Yslava, Ramon Yslava, Manuel Yslava, Jose Maria Yslava, Leonardo Yslava, Jose Yslava, Zenona Yslava, Zenona Arras, Vitoriano Zepeda, Fernando Zepeda, Rita Zepeda, Maria Zepeda, Josefa Zepeda, Adelaida Zepeda, Joaquin Zepeda, Carmen Carrillo, Antonio Zepeda, Ramona Zepeda, Ydubijen Bedollo, Francisco Medina, Enrique Bergera, Gregona Montiel and Martiana Montiel, Prudencio Montiel.

590 That the property assessed, situated, lying, and being within the county of Pima, and described thus:

An undivided interest in and to that certain private land claim, being the Mexican land grant known and designated as the Rancho of San Rafael de la Zanja, containing about 140,000 acres of land, as bounded and described in the expediente or title of said Mexican land grant on file in the office of the U. S. surveyor-general for the Territory of Arizona, at Tucson, was, on the 3d day of March, 1887, in accordance with law, offered for sale to pay said taxes and costs, at public auction, in front of the county court-house in said county. That on the day said property was first offered for sale at said auction, Alexander M. Fulford was the purchaser, who was willing to take the least quantity or smallest portion of the interest in said property and pay the taxes, percentage, and costs. That the least quantity or smallest portion of the interest in said property accepted by said Alexander M. Fulford for the taxes, percentages, and costs, is described as follows, to wit: All of said undivided interests and all of said property.

That the said Alexander M. Fulford, having paid two hundred and fifty dollars and ninety-five cents ($250.95), the full amount of said taxes, percentage, and costs (including one dollar for certificate of sale and eighty cents for filing same), was declared the purchaser, pursuant to law, of the said described piece or parcel of land so sold, as aforesaid, for said taxes, percentage, and costs, and that the said real estate was sold subject to redemption, pursuant to the statute in such case made and provided, and that unless redeemed within six months from the date of said purchase, said purchaser would be entitled to a deed at the expiration of six months from date of sale.

Whereupon the said treasurer and ex officio tax collector delivered to the purchaser a certificate of said sale, as is by law directed to be given,

and a duplicate of such certificate was duly filed by the said treasurer and ex officio tax collector in the office of the recorder of the said county of Pima; and

Whereas six months after said sale have expired, without any redemption of the said premises having been made;

Now, this indenture witnesseth, that the said John S. Wood, the treasurer and ex officio tax collector aforesaid, by virtue of and in pursuance of the statute in such cases made and provided, for and in consideration of the premises and of the sum of money paid to said treasurer and ex officio tax collector, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said Alexander M. Fulford, the second party hereto, and to his heirs, successors, and assigns forever, all the right, title, interest, and claim which the said—

591 Albino Aguirre, Antonio Acuna, Soledad M. de Asedo, Jesus Ballesteros, Florencio Dominguez, Juan Dominguez, Jesus Dominguez, Abundio Elias, Pedro Espinoso, Antonio Gonzales, jr., Leonardo Gonzales, Macedonio Gonzales, Eduardo Gracia, Atancio Hernandez, E. Garcia, Miguel Sigueiros, Jose Figueroa, Joaquin Figueroa, Dolores Acedo de Bergera, Esmerijilda Ruis de Thompson, Franco B. de Topia, Urbana U. de Sandoval, Felipe Ruis, Jesus Romero, Juan Romero, Quirino Eangel, Decidino Oguna, Magdalena Gonzales, Angel Lopez, Juna Lopez, Juan Diego Lopez, Petra Sevas, Juan Espinoza, Renino Gonzales, Macedonia Gonzales, Diega Sanches de Dominguez, Ramon Palomares, Antonio Balardes, Bentura M. de Barios, Rosalio Barios, jr., Dodolores de Apodaca, Matio Arviso, Joaquin Zepeda, Francisco Zepeda, Josefa Telles, Macedonio Gonzales, Encarnaceon Tavlos de Telles, Miguel Segueiros, Luis Salgado, Victor Ruis, Nabor Ruis, Cayetana C. de Ruis, Navor Rodrigues, Nemecio Quijoda, Antonio Ortega, Manuel Neira, Miguel Montiel, Luis Montiel, Juna Pablo Montiel, Lucio Montiel, Ysidro Montiel, Guillermo Montiel, Juan Montiel, Andres Montiel, Jose Maria Lopez, Andres Lopez, Angel Leon, Pedro Juvera, Merejildo Montoya, Balerio Montoya, Jose Maria Montoya, Anita Montoya, Jose Maria Montoya, jr., Raymon Montoya, Feliciano Montoya, Joaquin Montoya, Adolfo Montoya, Dionicio Montoya, Nicolas Montoya and Maria Montoya, Seberiana Fraijo, Juna Ramos, Gregorio Fraijo and Dolores Fraijo, Victoria Ramos, Leonardo Ramos and Bisenta Ramos, Pedro Michelena, Trinidad Michelena, Jose Maria Michelena, Pedro Michelena, jr., Umesiada Michelena, Manuela Michelena and Jose Maria Michelena, jr., Juana Ortega, Jesus Ortega, Juan de Dios Ortega and Antonio Ortega, Soledad Gonzales, Encarnacion Gonzales and Tiodora Gonzales, Ramona Orta, Jose Orta and Josefa Orta, Jose Fraijo, Pablo Fraijo, Juan Fraijo, Gregorio Fraijo, Jesus Fraijo, Josefa Fraijo and Lachina Fraijo, Santaigo Fraijo, Espiradion Fraijo, Pablo Fraijo, Calletano Fraijo, Dolores Bonias, Jose Montiel, Jose Ramon Montiel, Ysidoro Montiel, Juna Montiel, Josefa Montiel, Rafael Montiel, Luis Montiel, Gregoria Montiel, Simona Montiel, Alejandra Montiel and Bentura Montiel, Paulina Montiel, Miguel Montiel, Carlos Montiel and Mesados Montiel, Juan Pablo Montiel, Andres Montiel, Miguel Montiel, Guillermo Montiel, Lusio Montiel, Felipa Montiel and Yuginia Montiel, Rosalia Marquez, Estefano Montiel, Leandra Franco, Alejandra Franco, Jesus Franco, Aldifonso Marquez, Ysidora Marquez, Tula Marquez, Silberia Marquez,

Agapito Franco, Josefa Franco, Santas Usarraga, Noberto Usarraga, Ygnasio Usarraga, Nicolas Usarraga, Eligio Usarraga, Usbana Usarraga, Tula Usarraga, Bentura Usarraga, Umesinda Usarraga, Candelaria Trejo, Rosa Trejo, Francisca Trejo, Leonarda Trejo, Carmen Camarga, Gregorio Camarga, Francisco Camarga, Juana Camarga, Francisco Sandoval, Francisco Sandoval, jr., Lucas Sandoval, Candido Sandoval, Christina Sandoval, Manuel Barrios, Manuel Barrios, jr., Josefa Barrios, Refugia Barrios, Anita Barrios, Jose Ave, Jose Maria Bedolla, Antonio Bedolla, Antonio Bedolla, jr., Jose Maria Bedolla, jr., Guadalupe Bedolla, Juana Bedolla, Josefa Cruz, Tula Soto, Francisca Tapia, Feleciano Bedolla, Refugio Bedolla, Dyoneeio Bedolla, Geronimo Bellardes, Josefa Freijo, Jesus Freijo, Maria Freijo, Ysabel Freijo, Ysabel Granillo, Luis Granillo, Alejandro Granillo, Angela Granillo, Antonio Freijo, Nabor Freijo, Reinaldo Freijo, Maria Reijo, Francisca Freijo, Francisco Freijo, Francisco Duran, Paulino Duran, Alejandro Franco, Juan Franco, Agapito Franco, Barbara Mongui, Josefa Franco, Alferas Joaquin Limon, Jesus Limon, Luis Limon, Carmen Limon, Capitan Antonio Leon, Florentine Leon, Angel Leon, Blasa Pinera, Ygnacio Elias, Tiofila Apodaco, Leonardo Apodaca, Faustiena Apodaca, Pedro Lopez, Opomuceno Lopez, Antonio Lopez, Clementa Lopez, Damiana Lopez, Encarnaccon Lopez, Melitona Lopez, Feliz Lopez, Silicia Lopez, Gabriel Lopez, Ramon Lopez, Ynes Lopez, Victorio Lopez, Leandro Lopez, Relles Grijalva, Andres Grijalva, Domingo Grijalva, Tarivio Lopez, Juan Lopez, Eujenio Lopez, Guillermo Lopez, Sohana Lara, Sacramenta Lara, Bruno Lara, Eduardo Lara, Elena Lara, Petra Lopez, Valentine Montana, Asebero Montana, Eujenia, Sebastian Montana, Jesus Montana, Jose Maria Montana, Mariana Montana, Francisca Montana, Jose Antonio Ruiz, Alberto Ruiz, Feliz Ruiz, Nabor Ruiz, Felipe Ruiz, Victor Ruiz, Gandaloupe Juvera, Juana Ruiz, Rita Elias, Dimas Ruiz, Mariano Usarraga, Noberto Usarraga, Ygnacio Usarraga, Nicolas Usarraga, Angel Usarraga, Eligio Usarraga, Urbano Usarraga, Ygnacio Usarraga, Tula Dominquez, Francisco Dominquez, Bentura Leon, Asencion Leon, Feliz Leon, Angel Leon, Angela Leon, Umesinda Lopez, Santos Lopez, Maria Lopez, Guadaloupe Lopez, Urbana Lopez, Francisco Lopez, Miguel Yslava, Maximo Yslava, Jose Yslava, Jesus Yslava, Manuel Yslava, Jesus Yslava, Francisco Yslava, Ramon Yslava, Manuel Yslava, Jose Maria Yslava, Leonardo Yslava, Jose Ysalva, Zenona Ysalva, Zenona Arras, Vitoriano Zepeda, Fernando Zepeda, Rita Zepeda, Maria Zepeda, Josefa Zepeda, Adelaida Zepeda, Joaquin Zepeda, Carmen Carrillo, Antonio Zepeda, Ramona Zepeda, Ydubijan Bedollo, Francisco Medina, Enrique Bergera, Gregona Montiel and Martiana Montiel, Prudencio Montiel.

591½ had on the said 6th day of March, 1886, in and to all that certain property situate, lying and being in the said county Pima, Territory of Arizona, as heretofore particularly described.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said premises with the appurtenances unto the said party of the second part, his heirs, successors, and assigns forever, as fully absolutely as the said treasurer and ex officio tax collector can, may, or ought to, by virtue of the provisions of the said act of the legislature in such cases made and provided, grant, bargain, sell, convey, and confirm the same.

In witness whereof the said treasurer and ex officio tax collector, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

J. S. WOOD, [SEAL.]
Treasurer and ex officio Tax Collector of Pima County, A. T.

Signed, sealed, and delivered in the presence of—

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 23d day of January, A. D. 1888, personally appeared before me, the within named J. S. Wood, treasurer and ex officio tax collector of the county of Pima, Territory of Arizona, personally known to me to be the same person whose name is subscribed to the within instrument and acknowledged to me that he, as such treasurer and ex officio tax collector of said Pima County, executed the same, freely and voluntarily and for the uses and considerations and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my seal at my office in the said county of Pima, Territory of Arizona, the day and year in this certificate first above written.

[SEAL.] ANTHONY COENEN,
Notary Public, Pima Co., A. T.

Recorder's Office, Tucson, Pima Co., A. T. Filed and recorded at request of S. M. Franklin, 23 January, A. D. 1888, at 2.45 p. m., Book 14, Deeds of Real Estate, pages 489 to 497, incl. A. B. Sampson, county recorder.

(Endorsed:) Plaintiff's Ex. F 14.

592 F 15.

We, the undersigned, citizens of Santa Cruz, State of Sonora, Republic of Mexico, do each for himself or herself, and not one for the other, under oath, state that I am a citizen of Santa Cruz, that I know and am fully acquainted with the San Rafael de la Zanja grant, as designated by the expediente of May 25, 1825, to Ramon Romero and the citizens of Santa Cruz, and the title thereto; and that the title, management, and control of said grant has always been by the joint and common action of the citizens of Santa Cruz, through elections or otherwise; and that the heirs of Ramon Romero, while citizens of Santa Cruz, voted or acted only as any other citizen has the right to do; that the title is in the citizens and not in the person and is lo'ts when the person ceases to be a citizen of Santa Cruz. I further state that I joined in the election of
593 Andres Montiel, Jose Maria Lopez, and Angel Leon, as commissioners, and that they were fairly elected to negotiate for and make sale of the said San Rafael de la Zanja grant as set forth in said expediente, saving and excepting that portion of said grant lying, being, and situate in the State of Sonora, Republic of Mexico. I make this statement of my own free will and accord and because it is true. I further state that the commissioners having sold said grant I am no longer, directly or indirectly, interested in that portion lying, being, and situate in the counties of Pima and Cochise, Territory of Arizona. Miguel

Siqueiros, Andres Montiel, Angel Leon, Jose Ma Lopez, A. Aguirre, Guillermo Montiel, Miguel Montiel, Victor Ruiz, Pedro Juvera, Antonio Gonzales, Navor Rodriguez, Juan Montiel, Jesus Ballesteros, Encarnacion T. de Felles, Solidad M. de Asedo, Cayetana G. de Ruiz, Andres Lopez, Antonio Acuna, Francisco Zepada, Abundio Elias, Manuel Neira, Atanacio Hernandez, Jesus Dominguez, Luis Salgado, Nemesio Quijada, Anto. Gonzales, *Q.*, Luis Montiel, por Leonardo Gonzales, Macedonio Gonzales, Nabor Ruiz, Lucio Montiel, Pedro Espinosa, Eduardo Gracia, por Joaquin Zepeda, Francisco Zepeda, Anto. Belardes, Angel Lopez, y Juan Lopez, Petra Leivas y Juan Espinosa hijo, A. Aguirre, Ysidora Montiel, Juan Romero, Juan Dominguez, F. Dominguez, Mateo Arviso, Dolores de Apadaca, Urbana U. de Sandoval, Juan Diego Lopez, Desiderio Osuna, Eduardo Gracia, primo hermano, Feliepe Ruiz, Esmeregilda Ruiz, Franca B. de Tapia, Marcelo Tapia, Diega Sanchez de Dominguez, Roman Palomares, Josefa Telles, Macedonio Gonzales, Jesus Romero, Bentura M. de Barrios, Rosalio Barrios, Quirino Rangel, Regino Gonzalez, Jose Figueroa, Joaquin Figueroa, Dolores Acedo de Bergara y de Jesus Belardez.

We, Miguel Siqueiros, president of Santa Cruz, State of Sonora, Republic of Mexico, and Angel Leon, Jose Maria Lopez, and Andres Montiel, commissioners of the town and for the citizens of Santa Cruz, witness that the above names were signed, or authorized to be signed, in our presence, and that they are citizens of Santa Cruz, and that they were fully informed of the contents thereof before signing.

Done at Lochiel P. O., Pima County, Arizona.

MIGUEL SIQUEIROS, *Presidente de Sta. Cruz.*
ANGEL LEON, *Comisionado.*
JOSE MA LOPEZ, *Comisionado.*
ANDRES MONTIEL, *Comisionado.*

Witnesses:
A. AGUIRRE.
HARRY K. HILDEBRANT.
JOHN P. MECARTNEY.

LOCHIEL P. O., PIMA COUNTY, ARIZONA.

TERRITORY OF ARIZONA,
County of Pima, ss:

On the 30th and 31st days of March and the 3rd day of April, 1885, before me, Lewis Wolfley, a notary public in and for the county of Pima, Arizona, personally appeared Miguel Siqueiros, Andres Montiel, Angel Leon, Jose Maria Lopez, A. Aguirre, Guillermo Montiel, Miguel Montiel, Victor Ruiz, Pedro Juvera, Antonio Gonzalez, Navor Rodriguez,
Juan Montiel, Jesus Bellesteros, Ebcarnacion T. de Telles,
594 Sokidad M. de Asedo, Cayetana G. de Ruiz, Andres Lopez, Antonio Acuna, Francisco Zepeda, Abundio Elias, Manuel Neria, Atenacio Hernandez, Jesus Dominguez, Luis Selgado, Nemecio Quijada, Antonion Gonzales, 2d., Luis Montiel, Macedonio Gonzales, for Leonardo Gonzales, Nabor Ruiz, Lucio Montiel, Pedro Espinosa, Eduardo Gracia, Francisco Zepeda, for Joaquin Zepeda, Antonion Bellardes, Angel Lopez, Juan Lopez, Petra Leivas, Juan Espinosa, Ysidora Montiel, Juan Romero,

Juan Domingues, Florencio Doningues, Mateo Arviso, Dolores, de Apadaca, Herbana U. de Sandoval, Juan Diego Lopez, Desiderios Osuna, Feliepe Ruiz, Esmerejilda Ruiz, Franca. B. de Tapia, Marcelo Tapia, Diega Sanches de Domingues, Roman Palomeros, Josefa Telles, Macedonio Gonzales, Jesus Romero, Bentura M. de Barrios, Rosalio Barrios, Quirino Rangel, Regino Gonzalez, Jose Figueroa, Joaquin Figueroa, Dolores Acedo de Bergara de Belardes, as principals, and Miguel Siqueiros, Angel Leon, Jose Maria Lopez, and Andres Montiel and A. Aguirre, Harry K. Hildebrant, and John P. Mecartney, whose names are subscribed to the annexed instrument as the parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as the parties thereto, and who under oath duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate last above written, viz, April 3, 1885.

[SEAL.]

LEWIS WOLFLEY,
Notary Public, Pima County, Arizona.

Filed and recorded at request of Lewis Wolfley, 13th April, A. D. 1885, at 1.50 p. m. A. B. Sampson, county recorder.

(Endorsed:) Plaintiffs' Ex. F 15.

595 F 16.

SANTA CRUZ, STATE OF SONORA, REPUBLIC OF MEXICO,
April 3, 1885.

To the ASSESSOR OF PIMA COUNTY,
Tucson, Arizona.

SIR: The duly elected commissioners in and for the town of Santa Cruz, having sold the San Rafael de la Zanja grant, lying in said Pima County, to Brewster Cameron, I hereby authorize you to substitute the name of Brewster Cameron for that of Ysidora Montiel & Co. upon the books of the assessor's office of said Pima County, Arizona.

YSIDORA MONTIELL.

Approved: Miguel Siguirras, President Santa Cruz, State of Sonora, Republic of Mexico.

MIGUEL SIGUIRRAS.

LOCHIEL P. O.,
Pima County, Arizona, April 3, 1885.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this the third day of April, A. D. one thousand eight hundred and eighty-five, before me, Lewis Wolfley, a notary public in and for the county of Pima, Arizona, personally appeared Ysidora Montiel and Miguel Sigueiros, whose names are subscribed to the annexed instrument as the parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as the parties thereto,

and who duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] LEWIS WOLFLEY,
Notary Public, Pima County, Arizona.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of Lewis Wolfley, 18th April, A. D. 1885, at 10.15 a. m., book 2, Misc. Records, pages 794 and 795. A. B. Sampson, county recorder.

(Endorsed:) Plaintiff's Ex., F 16.

596 F 17.

TERRITORY OF ARIZONA,
County of Pima, ss:

Know all men by these presents, that whereas, by virtue of a certain execution issued out of the district court of the first judicial district in and for the county of Pima, Territory of Arizona, in favor of W. W. Hoover and Thomas D. Satterwhite, copartners, plaintiffs, and against The San Rafael Company, defendants, on a certain judgment rendered on the 12th day of December, 1887, and directed and delivered to me on the 16th day of January, 1888, as sheriff of the county of Pima, Territory of Arizona, commanding me of the goods, chattels, lands, and tenements of the said The San Rafael Company, defendants, to make certain moneys in said writ specified, to wit, the sum of two thousand five hundred dollars ($2,500), with interest at rate of seven per cent per annum from December 12, 1887, together with six and $\frac{75}{100}$ dollars costs: Now, therefore, I, M. F. Shaw, sheriff as aforesaid, did on the 16th day of January, 1888, levy on and seize all the estate, right, title, and interest which the said defendants, The San Rafael Company, had of, in, and to the premises hereinafter described, and on the 7th day of February, 1888, being the first Tuesday of the month, at 11.30 o'clock a. m. of said day, after due advertisement, sold said premises in one lot, there being no bid for any separate part or parcel thereof, though said property was exposed to sale in separate lots, at public vendue, in the city of Tucson, county of Pima, Arizona Territory, at the court-house door thereof, to John H. Martin, for the sum of fifty dollars, he being the highest bidder and said sum being the highest bid for said property, and the said purchaser, having complied with the terms of said bid, I, M. F. Shaw, sheriff as aforesaid, by these presents do sell, grant, and convey unto the said John H. Martin all the estate, right, title, and interest which the said The San Rafael Company, defendants, had on the 16th day of January, 1888, or at any time afterwards, of, in, and to the following described premises, viz, all that certain piece, parcel, or tract of land containing, by examination, about one hundred and forty thousand (140,000) acres, known as the rancho San Rafael de la Zanja, situated, lying, and being partly in southern Arizona and partly in northern Mexico (that is to say, a portion of said tract is situated in the southerly part of the Territory of Arizona, and the remaining portion of said tract is situated in the northerly part of the Republic of Mexico) and being the same premises which was formerly vested in Ramon Romero by the

Government of Mexico, about May 15, 1825, as appears by the expediente bearing date on that day, and now of record in the office of the county recorder of Pima County, in the Territory of Arizona, to which records for a fuller and more definite description of said rancho reference is hereby made, excepting a certain portion of said tract containing twenty-five acres heretofore conveyed to the Yankee Smelting Company; also a certain portion of said tract, containing eighty acres, heretofore conveyed to Mrs. Mary Harrison; also a certain portion of said tract, containing twenty acres, heretofore conveyed to Mrs. Matilda Elder.

597 To have and to hold the above-described premises unto the said John H. Martin, his heirs and assigns forever, as fully and as absolutely as I, as sheriff as aforesaid, can convey by virtue of the said writ of execution.

In testimony whereof I have hereunto set my hand this 13th day of February, 1888.

M. F. SHAW.
Sheriff, Pima County, Arizona Territory.

TERRITORY OF ARIZONA,
County of Pima, ss:

Before me, William J. Osborn, a notary public in and for said county of Pima, on this day personally appeared M. F. Shaw, known to me to be the same person whose name is subscribed to the annexed instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 13th day of February, 1888.

W. J. OSBORN,
Notary Public.

Filed and recorded at request of T. D. Satterwhite this 16th day of February, 1889, at 11.45 a. m. Charles A. Shibell, county recorder.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Charles A. Shibell, county recorder in and for the county of Pima, do hereby certify that the above and foregoing is a full, true, and correct copy of a sheriff deed from M. F. Shaw, as sheriff, to John H. Martin as appears of record now in my office in Book 21, Deeds Real Estate, pages 33, 34, and 35.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in Tucson this 1st day of July, A. D. 1889.

CHARLES A. SHIBELL,
County Recorder.

[Seal recorder Pima County, Arizona Territory.]

(Endorsed:) Sheriff deed, M. F. Shaw to John H. Martin. Dated February 13, 1888.

(Endorsed:) Sheriff's deed, M. F. Shaw to John H. Martin, dated February 13, 1888. Plaintiff's Ex. F 17.

598 F 18.

This indenture, made the 21st day of February, in the year of our Lord one thousand eight hundred and eighty-eight, between Alexander M. Fulford and Elizabeth H., his wife, of the State of Maryland, party of the first part, and Brewster Cameron, of the county of Pima, Territory of Arizona, party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of five hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, both in law and in equity, of the said party of the first part, of, in, and to that certain tract or parcel of land known and called the Rancho San Rafael de la Zanja, which was acquired by said Alexander M. Fulford, by a certain tax deed of date the twenty-third day of January, 1888, made and executed by John S. Wood, treasurer and ex-officio tax collector of said Pima County, to said Fulford; which deed is of record in the office of the county recorder of said Pima County, in Book 14 of Deeds of Real Estate, pages 489 to 497, both inclusive, reference to which deed or to the record thereof is hereby made for a more full and complete description of the estate, interests, and property hereby conveyed.

Together with all and singular *and singular* the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

ALEX. M. FULFORD.
ELIZABETH H. FULFORD.

Signed, sealed, and delivered in the presence of—
THOS. H. ROBINSON.

STATE OF MARYLAND,
County of Harford, ss:

Before me, Thomas H. Robinson, a notary public in and for the State of Maryland, on this day personally appeared Alexander M. Fulford and Elizabeth H., his wife, known to me to be the persons whose names are subscribed to the annexed instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed; and the said Elizabeth H. Fulford, wife of said Alexander M. Fulford, being by me privately examined, separate and apart from her said husband, did further acknowledge that she executed said instrument freely and voluntarily without any fear, threats, or compulsion of her said husband, and that she did not wish to retract the same.

Given under my hand and seal of office this 21st day of February, A. D. 1888.

[SEAL.] THOS. H. ROBINSON,
Notary Public.

Recorder's office, Tucson, Pima County, A. T. Filed and recorded at request of S. M. Franklin, 27th February, A. D. 1888, at 2.10 p. m. Book 15, Deeds of Real Estate, pages 205 & 206. A. B. Samson, county recorder.

(Endorsed:) Plaintiff's Ex. F 18.

599 F 19

This indenture, made this 1st day of July, A. D. 1889, between John H. Martin, of Tucson, county of Pima, Territory of Arizona, the party of the first part, and Robert H. Payne, of the city of St. Louis, State of Missouri, the party of the second part, witnesseth: that the said party of the first part for and in consideration of the sum of five hundred and fifty dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land situate, lying and being in the county of Pima, Territory of Arizona, and bounded and particularly described as follows, to wit: that certain tract of land containing 140,000 acres, known as the Rancho San Rafael de la Zanja, situate, lying and being partly in Southern Arizona and partly in Northern Mexico (that is to say, a portion of said tract is situated in the southerly part of Arizona Territory, and the remaining portion of said tract is situated in the northerly part of the Republic of Mexico), and being the same premises which was formerly vested in Ramon Romero by the government of Mexico, about May 15, 1825, as appears by the expediente bearing date on that day, and now of record in the office of the county recorder of said Pima County, Territory of Arizona, to which records for a fuller and more definite description of said rancho reference is hereby made; excepting a certain portion of said tract containing twenty-five acres, heretofore conveyed to the Yankee Smelting Company; also, a certain portion of said tract containing eighty acres, heretofore conveyed to Mrs. Mary Harrison; also, a certain portion of said tract, containing twenty acres, heretofore conveyed to Mrs. Matilda Elder; and being the same lands and premises heretofore and on the 13th day of February, 1889, conveyed by M. F. Shaw, sheriff of Pima County, Arizona Territory, to said John H. Martin, a copy of which said deed is of record in the office of the county recorder of said Pima County, in Book 21 of Deeds of Real Estate, pages 33, 34, and 35.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises, together with

the appurtena'ces, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

J. H. MARTIN [SEAL].

Signsed, sealed and delivered in the presence of—

TERRITORY OF ARIZONA,
County of Pima, ss.

Before me, Selim M. Franklin, a notary public in and for said county of Pima, on this day personally appeared John H. Martin, known to me to be the same person whose name is subscribed to the annexed instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

600 Given under my hand and seal of office this 5th day of July, A. D. 1889.

SELIM M. FRANKLIN,
Notary Public.

[Seal. Notary public, Pima County, Arizona Territory.]

TERRITORY OF ARIZONA,
County of Pima, ss.

I hereby certify that the within instrument was filed and recorded at the request of R. H. Payne, July 5, A. D. 1889, at 3.30 p. m., in Book 21, Deeds Real Estate, at pages 179, 180 and 181.

Witness my hand and official seal the day and year aforesaid.

CHAS. A. SHIBELL,
County Recorder.

[Seal. Recorder Pima County, Arizona Territory.]
(Endorsed:) John H. Martin to Robert H. Payne. Deed. Dated July 1, 1889.
(Endorsed:) Plaintiffs Ex. F. 19.

601 F 20.

This indenture, made this first day of August, A. D. 1889, between Robert H. Payne, of the city of St. Louis, State of Missouri, a single man, the party of the first part, and Alexander M. Fulford, of Bel Air, county of Harford, State of Maryland, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifteen hundred ($1,500) dollars lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quitclaim unto the said party of the second part and to his heirs and assigns forever, and interest in that certain lot and parcel of land situate, lying, and being in the Territory of Arizona, partly in the county of Pima and partly in the county of Cochise, and particularly described as follows, to wit: All the right, title, and interest which the said party of the first part obtained or acquired in that certain Mexican grant, lying partly in the counties of Pima and Cochise

and partly in the State of Sonora, Republic of Mexico, known and called the Rancho San Rafael de la Zanja, according to the description of said grant as set forth in the original expediente wherein and whereby the Republic of Mexico granted said land to Ramon Romero and other citizens of Santa Cruz in the State of Sonora, Republic of Mexico, dated May 15, 1825, by reason of the party of the first part having on January 4, 1888, bought at the sale of property for delinquent taxes due the Territory of Arizona and the county of Pima a certain mortgage upon the above-described Mexican grant, given by William C. Jones, trustee, to Alfred A. Greene, to secure the payment to said Alfred A. Greene of the sum of fifty-nine thousand ($59,000) dollars which said mortgage was duly assessed and listed for taxation in Pima County, Territory of Arizona, for the year 1886, and at the time of said sale said taxes were due, unpaid, and delinquent, all of which will more fully and at large appear by reference to the deed made by Alfred A. Greene, by John S. Wood, tax collector of Pima County, Territory of Arizona, which said deed is dated January 4, 1888, and is recorded in the office of the county recorder of said Pima County, in Book 14 of Deeds of Real Estate, pages 448 to 451, inclusive.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ROBERT H. PAYNE.

Signed, sealed, and delivered in presence of—
ROCHESTER FORD.
E. O'DONNELL.

STATE OF MISSOURI,
City of Missouri, ss:

Before me, Harvey L. Christie, a notary public within and for the city of St. Louis, in the State of Missouri, personally appeared Robert H. Payne, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed. And the said Robert H. Payne further declared himself to be single and unmarried.

Given under my hand and seal of office this 4th day of September, A. D. 1889.

[SEAL.] HARVEY L. CHRISTIE,
Notary Public, City of St. Louis, Missouri.

TERRITORY OF ARIZONA,
County of Pima, ss:

I hereby certify that the within instrument was filed and recorded at the request of S. M. Franklin September 11, A. D. 1889, at 10.50 a. m. in Book 16, Deeds Real Estate, at page' 134 and 135.

Witness my hand and official seal the day and year aforesaid.

CHARLES A. SHIBELL,
County Recorder.

(Endorsed:) Plaintiff's Ex. F 20.

602 F 21.

This indenture, made this first day of August, A. D. 1889, between Robert H. Payne, of the city of St. Louis, State of Missouri, a single man, the party of the first part, and Brewster Cameron, of Pima County, Territory of Arizona, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land situate, lying, and being in the counties of Pima and Cochise, Territory of Arizona, and bounded and particularly described as follows, to wit: That certain Mexican grant known as the San Rafael de la Zanja, according to the description as set forth in the original expediente, wherein and whereby the Republic of Mexico granted said land to Ramon Romero and other citizens of Santa Cruz, in the State of Sonora, Republic of Mexico, which said expediente is dated the 15th day of May, 1825. It is fully and understood and agreed that this conveyance is made under and subject to the payment of a certain mortgage debt or principal sum of fifty-nine thousand dollars ($59,000) set forth as due to Alfred A. Green, in a certain mortgage, made, executed, and delivered to said Alfred A. Green by William C. Jones, trustee, to secure to said Alfred A. Green the prompt payment of said sum of fifty-nine thousand dollars ($59,000) according to the terms and conditions of said mortgage, which said mortgage was upon all of the above-described lands and appurtenances, and which mortgage was sold in the name of Alfred A. Green by John S. Woods as tax collector of Pima County, Territory of Arizona, where said mortgage was duly assessed and listed for taxation for the taxes of 1886, and for the taxes of which year said mortgage was sold by said John S. Woods, as tax collector, to said Robert H. Payne, on the 4th day of January, 1888, as more fully appears by the deed of Alfred A. Green by John S. Woods, as said tax collector as aforesaid, which said deed is duly recorded in the office of the county recorder of Pima County, Territory of Arizona, in Book 14, Deeds of Real Estate, pages 448 to 451, inclusive, which said mortgage is still in full force and effect, and the full amount of fifty-nine thousand dollars ($59,000) as therein expressed is still due and unpaid to said Robert H. Payne, and the right to sue for and collect the same is still vested in the said Payne, and in no other person or persons whomsoever.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever; subject only to Robert H. Payne's interest or title thereto under the mortgage above referred to.

603 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ROBERT H. PAYNE. [SEAL.]

Signed, sealed, and delivered in the presence of—
ROCHESTER FORD.
E. O'DONNELL.

STATE OF MISSOURI,
City of St. Louis, ss:

Before me, Harvey L. Christie, a notary public within and for the city of St. Louis, in the State of Missouri, personally appeared Robert H. Payne, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed. And the said Robert H. Payne further declared himself to be single and unmarried.

Given under my hand and seal of office this 4th day of September, A. D. 1889.

HARVEY L. CHRISTIE,
Notary Public, City of St. Louis, Missouri.

[Seal. Harvey L. Christie, notary public, city of St. Louis, Missouri. Commission expires June 26, 1893.]

TERRITORY OF ARIZONA,
County of Pima, ss:

I hereby certify that the within instrument was filed and recorded at the request of S. M. Franklin, September 11, A. D. 1889, at 10.50 a. m., in Book 16, Deed Real Estate, at pages 136 and 137.

Witness my hand and official seal the day and year aforesaid.

CHAS. A. SHIBELL,
County Recorder.

[Seal. Recorder of Pima County, Arizona Territory.]

(Endorsed:) Robert H. Payne to Brewster Cameron. Deed. Dated August 1, 1889.

(Endorsed:) Plaintiff's Ex. F. 21.

604 F 22.

This indenture, made this eighth day of January, in the year of our Lord one thousand eight hundred and ninety, between Brewster Cameron and Katharine F. Cameron, his wife, of the city of Tucson, county of Pima, Territory of Arizona, of the first part, and Rochester Ford, of the city of St. Louis, State of Missouri, of the second part, witnesseth:

That the said Brewster and Katharine F. Cameron, for and in consideration of the sum of five hundred dollars, in lawful money of the United States, to them in hand paid by the said Rochester Ford, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, quitclaimed, and conveyed, and do by these presents grant, bargain, sell, alien, release, quitclaim, and convey, unto the said Rochester Ford and to his heirs and assigns forever the following property in Pima and Cochise counties, Arizona Territory, to wit: That certain Mexican grant, known as the San Rafael de la Zanja, according to the description as set forth in the original expediente, wherein and whereby the Republic of Mexico granted said land to Ramon Romero and other citizens of Santa Cruz, in the State of Sonora, Republic of Mexico, which said expediente is dated the 15th day of May, 1825. It is fully understood and agreed that this conveyance is made under and subject to the payment of a certain mortgage debt or principal sum, as fully set forth in the deed from Robert H. Payne to Brewster Cameron, dated August 1, 1889, and recorded in the office of the recorder of deeds of Pima county, Arizona Territory, in Book 16, Deeds to Real Estate, pages 136 and 137, which said mortgage is still due and unpaid to said Robert H. Payne and his assigns, and the right to sue for and collect the same is still vested in said Payne and his assigns, and in no other person or persons whomsoever, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise, however of the said parties of the first part of, in, to, or out of the said Brewster and Katharine F. Cameron.

To have and to hold the said real estate and premises and appurtenances unto the said Rochester Ford, his heirs and assigns forever, subject only to Robert H. Payne's interest or title thereto under the mortgage above referred to.

In testimony whereof the said Brewster and Katharine F. Cameron have hereunto set their hand and seal on the day and year first herein before written.

BREWSTER CAMERON.
KATHARINE F. CAMERON.

Signed, sealed, and delivered in the presence of—
ALFRED B. BRIGGS, as to Brewster Cameron.
B. W. TICHENOR, as to Katharine F. Cameron.

CITY OF WASHINGTON,
District of Columbia, ss:

Before me, Alfred B. Briggs, a notary public within and for the city of Washington, in the District of Columbia, personally appeared Brewster Cameron, known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this eighth day of January, 1890.

[SEAL.]

ALFRED B. BRIGGS,
Notary Public.

605 TERRITORY OF ARIZONA,
County of Pima, ss:

Before me, Bryan W. Tichenor, a notary public in and for said county of Pima, on this day personally appeared Katharine F. Cameron, known to me to be one of the same persons whose names are subscribed to the annexed instrument, and having been examined by me privately and apart from her husband, and having the same fully explained to her, she, the said Katharine F. Cameron, acknowledged to me that she executed the same as her voluntary act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 13th day of January, A. D. 1890.

[SEAL.] BRYAN W. TICHENOR,
Notary Public, Pima County, Arizona.

TERRITORY OF ARIZONA,
County of Pima, ss:

I hereby certify that the within instrument was filed and recorded at the request of Rochester Ford, January 13, A. D. 1890, at 3 p. m., in Book 21, Deeds Real Estate, at pages 353, 354, and 355.

Witness my hand and official seal the day and year aforesaid.

CHAS. A. SHIBELL,
County Recorder.

(Endorsed:) Plaintiff, Ex. F 22.

606 F. 23.

This indenture, made this 8th day of January, A. D. 1890, between Brewster Cameron and Katharine F. Cameron, his wife, of the city of Tucson, county of Pima, Territory of Arizona, parties of the first part, and Rochester Ford, of the city of St. Louis, State of Missouri, party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of one thousand dollars, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release, and forever quit claim unto the said party of the second part, and to his heirs and assigns forever all that certain lot and parcel of land situate, lying and being in the counties of Pima and Cochise, Territory of Arizona, and bounded and particularly described as follows, to wit: That certain Mexican or Spanish land grant known as the San Rafael de la Zanja grant, according to the description thereof as set forth in the original expediente, wherein and whereby the Republic of Mexico granted said land to Ramon Romero and other citizens of Santa Cruz, in the State of Sonora, Republic of Mexico, said expediente is dated the 15th day of May, 1825, and is now on file in the office of the Surveyor-General for the Territory of Arizona. It is fully understood and agreed that this conveyance is made under and subject to the payment of a certain mortgage debt or principal sum of fifty-nine thousand dollars ($59,000) set forth as due to Alfred A. Green in a certain mortgage made, executed, and delivered to said Alfred A. Green by William C. Jones, trustee, to

secure said Alfred A. Green the prompt payment of said sum of fifty-nine thousand dollars ($59,000) according to the terms and conditions of said mortgage, which said mortgage was upon all of the above-described lands and appurtenances, and which mortgage was sold in the name of Alfred A. Green by John S. Wood, as tax collector of Pima County, Territory of Arizona, where said mortgage was duly assessed and listed for taxation for the taxes of 1886, and for the taxes of which year said mortgage was sold by said John S. Wood, as tax collector, to said Robert H. Payne on the 4th day of January, 1888, as more fully appears by the deed of Alfred A. Green by John S. Wood as said tax collector as aforesaid, which said deed is duly recorded in the office of the county recorder of Pima County, Territory of Arizona, in book 14, deeds of real estate, pages 448 to 451, inclusive, which said mortgage is still in full force and effect, and the full amount of fifty-nine thousand dollars ($59,000), as therein expressed, is still due and unpaid to said Robert H. Payne or his assigns, and the right to sue for and collect the same is still vested in the said Payne and his assigns, and in no other person or persons whomsoever.

It is fully understood and agreed that this conveyance is a conveyance of all the right, title, and interest of any and every kind and description now owned by said parties of the first part, whether said interest was acquired by deeds above referred to from Robert H. Payne, or from any purchase of the said San Rafael de la Zanja grant at *at* sale for taxes, or from any persons claiming to be the owners or descendants of the original owners of said grant.

607 Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever, subject only to Robert H. Payne's interest or title thereto under the mortgage above referred to.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

BREWSTER CAMERON. [SEAL.]
KATHARINE F. CAMERON. [SEAL.]

Signed, sealed, and delivered in the presence of—
ALFRED B. BRIGGS.

DISTRICT OF COLUMBIA,
City of Washington, ss.

Before me, a notary public, within and for the city of Washington, District of Columbia, on this day personally appeared Brewster Cameron, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 13th day of January, A. D. 1890.

[Seal. Alfred B. Briggs, notary public, District of Columbia.]

ALFRED B. BRIGGS,
Notary Public.

TERRITORY OF ARIZONA,
City of Tucson, ss:

Before me, a notary public, within and for the county of Pima, Territory of Arizona, on this day personally appeared Katharine F. Cameron, wife of Brewster Cameron, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Katharine F. Cameron, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 23d day of January, A. D. 1890.

[Seal. Notary public, Pima County, Territory of Arizona.] BRYAN W. TICHENOR,
Notary Public, Pima Co., Ariz.

TERRITORY OF ARIZONA,
County of Pima, ss:

I hereby certify that the within instrument was filed and recorded at the request of Rochester Ford, January 23, A. D. 1890, at 2 p. m., in Book 21, Deeds Real Estate, at pages 363 to 366, inclusive.

Witness my hand and official seal the day and year aforesaid.

CHAS. A. SHIBELL, *County Recorder.*

[Seal. Recorder Pima County, Arizona Territory.]
(Endorsed:) Plaintiffs' Ex. F 23.

F 24.

608 This indenture, made the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and ninety-one, between M. F. Shaw, late sheriff of the county of Pima, Territory of Arizona, the party of the first part, and Brewster Cameron, also of the said county of Pima, the said party of the second part; whereas, by virtue of a writ of execution, issued out of and under the seal of the first judicial district court of the county of Pima, Territory of Arizona, tested the fifth day of July, 1889, upon a judgment recovered in the said court on the twelfth day of December, 1887, in favor of W. W. Hoover and Thomas D. Satterwhite, copartners under the name of Hoover & Satterwhite, and against the San Rafael Company, a corporation, to the said sheriff directed and delivered, commanding him that out of the personal property of said judgment debtor, the San Rafael Company, a corporation in his county, he should cause to be made certain money in the said writ specified, and if sufficient personal property of the said judgment debtor, the San Rafael Company, a corporation, could not be found, then he should cause the amount of said judgment to be made out of the real property belonging to said judgment debtor, the San Rafael Company, a corporation, on the 12th day of December, 1887, or at any time afterwards; and whereas, because sufficient personal property of the said judgment debtor, the San Rafael Company, a corporation, could not be found whereof the said sheriff could cause to be made the money specified in said writ, the said

heriff did, in obedience to said command, levy on, take, and seize all the ight, title, interest, and claim which the said judgment debtor, the San Rafael Company, a corporation, so had to the lands, tenements, real state, and premises, hereinafter particularly set forth and described, with the appurtenances, and did on the twenty-ninth day of July, 1889, sell all the right, title, interest, and claim of said judgment debtor, the San Rafael Company, a corporation, in and to the said premises, at public auction in front of the courthouse, in the city of Tucson, in said county of Pima, Territory of Arizona, between the hours of nine in the morning and five in the afternoon, of that day, namely, at 12 o'clock m., after having first given due notice of the time and place of such sale according to law: at which sale all the right, title, interest, and claim of the said judgment debtor, the San Rafael Company, a corporation, in and to the said premises, were struck off and sold to the said party of the second part for the sum of six hundred ($600) dollars lawful money of the United States of America, the said party of the second part being the highest bidder, and that being the highest sum bid for the same, whereupon the said sheriff, after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to the said party of the second part such certificate of said sale as is by law directed to be given, and a duplicate of such certificate was duly filed by the said sheriff in the office of the recorder of the said county of Pima; and whereas six months after said sale have expired without any redemption of the said premises having been made: Now this indenture witnesseth, That the said M. F. Shaw, the sheriff aforesaid, by virtue of the said writ, and in pursuance of the statute in such case made and provided, for and in consideration of the said sum of money to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part and to his heirs and assigns forever all the right, title, interest, and claim which the said judgment debtor, the San Rafael Company, a corporation, had on the said twelfth day of December, 1887, or at any time afterwards, or now has in and to all that certain lot, piece, or parcel of land, situate, lying, and being in the said county of Pima, Territory of Arizona, and bounded and particularly described as follows, to wit: All that certain lot, piece, or parcel of land and portion of the private land claim or Mexican grant known and called the Rancho San Rafael de la Zanja, which is situate and being in the said county of Pima; which said land and premises were duly granted to Ramon Romero and his parcioneros of Santa Cruz by the Mexican
609 Government, on or about May 15, 1825, as appears by the expediente or title bearing date on that day, and now of record in the office of the county recorder of Pima County, Arizona Territory, in book No. 3, pages sixty-five (65) to seventy-four (74) transcribed records of Pima County, to which said record reference is hereby made for a more full and complete description of said property.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the said premises with the appurtenances unto the said party of the second part, his heirs, and assigns forever, as fully

and absolutely as the said sheriff can, may, or ought to, by virtue of said writ and of the statute in such case made and provided, grant, bargain, sell, convey, and confirm the same.

In witness whereof the said sheriff, the said party of the first part, has hereunto set his hand and seal, the day and year first above written.

M. F. SHAW,
Late Sheriff of the County of Pima, Territory of Arizona.

Signed, sealed, and delivered in presence of—
SELIM M. FRANKLIN.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 27th day of October, A. D. eighteen hundred and ninety-one, before me personally appeared the within-named M. F. Shaw, late sheriff of the county of Pima, Territory of Arizona, known to me to be the same person whose name is subscribed to the within instrument, and he acknowledged to me that he, as such sheriff of said county, executed the same for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the county of Pima, Territory of Arizona, the day and year in this certificate first above written.

[SEAL.] SELIM M. FRANKLIN,
Notary Public, Pima County, Arizona.

TERRITORY OF ARIZONA,
County of Pima, ss:

I hereby certify that the within instrument was filed and recorded at the request of S. M. Franklin, October 29, 1891, at ten a. m., in book 23, Deeds Real Estate, page 222, 223, 224, &c.

Witness my hand and official seal the day and year aforesaid.

CHARLES A. SHIBELL,
County Recorder.

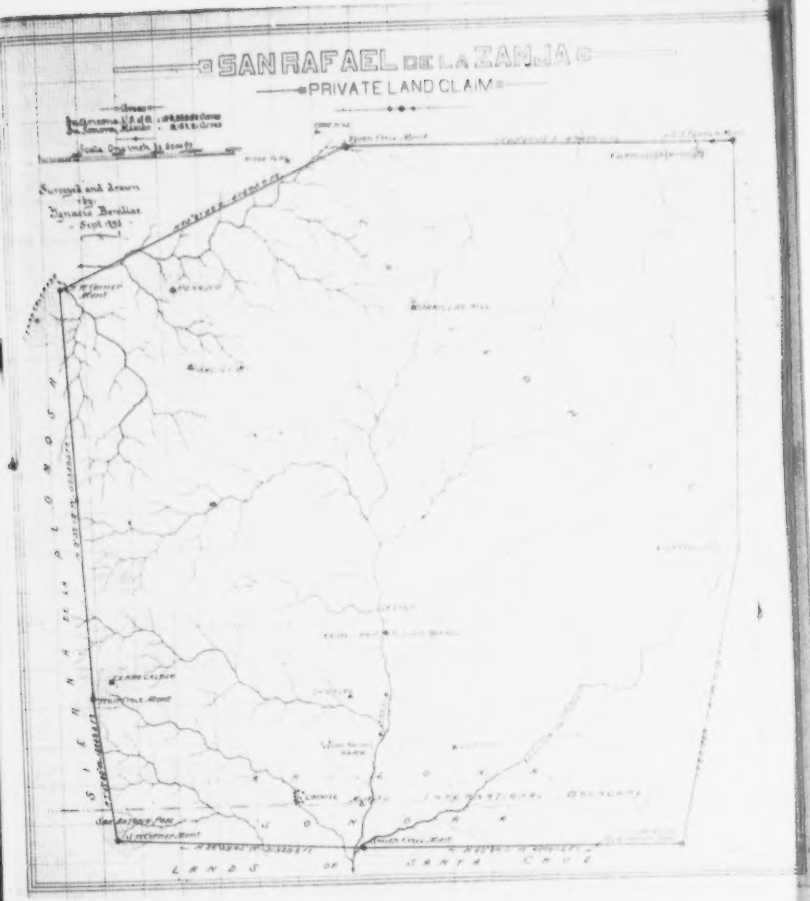
(Endorsed:) Plaintiff's Ex. F 24.

610 *Photographic exhibits marked:*

F 25.	F 31.	F 37.	F 43.
F 26.	F 32.	F 38.	F 44.
F 27.	F 33.	F 39.	F 45.
F 28.	F 34.	F 40.	F 46.
F 29.	F 35.	F 41.	
F 30.	F 36.	F 42.	

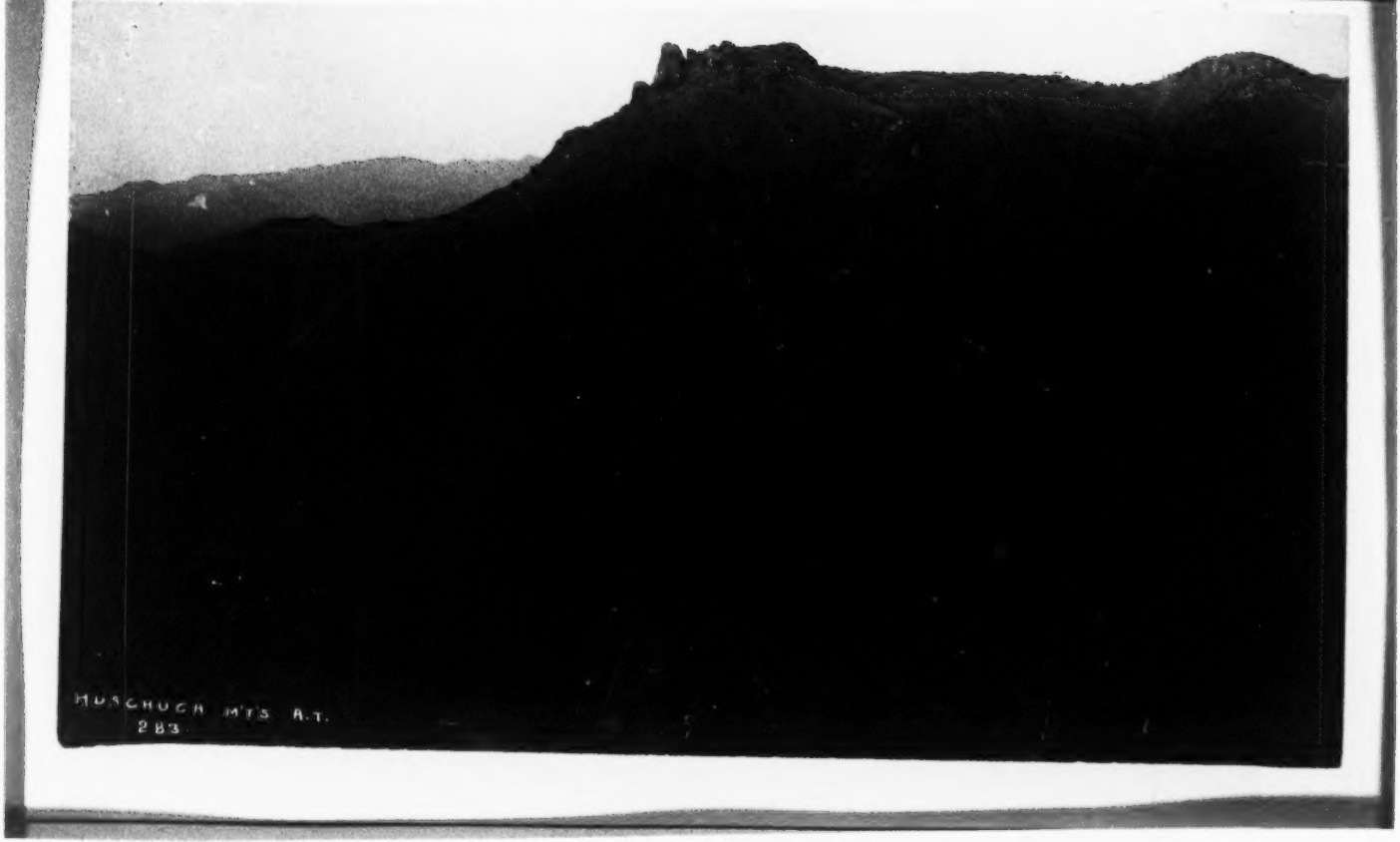
611 F 47.

Know all men by these presents, that I, Alfred A. Greene, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, R. R. Richardson my true and lawful attorney for me and in my name to sell and lease or contract for the sale or lease of certain property hereinafter particularly described and embraced within the


SAN RAFAEL DE LA ZANJA
PRIVATE LAND CLAIM
Surveyed and drawn by Ignacio Bonillas Sept 1881
SIERRA MADRE
LANDS OF SANTA CRUZ

POOR COPY

HUACHUCA MT'S. A.T. 886.


MUSCHUGA MTS A.T.
283

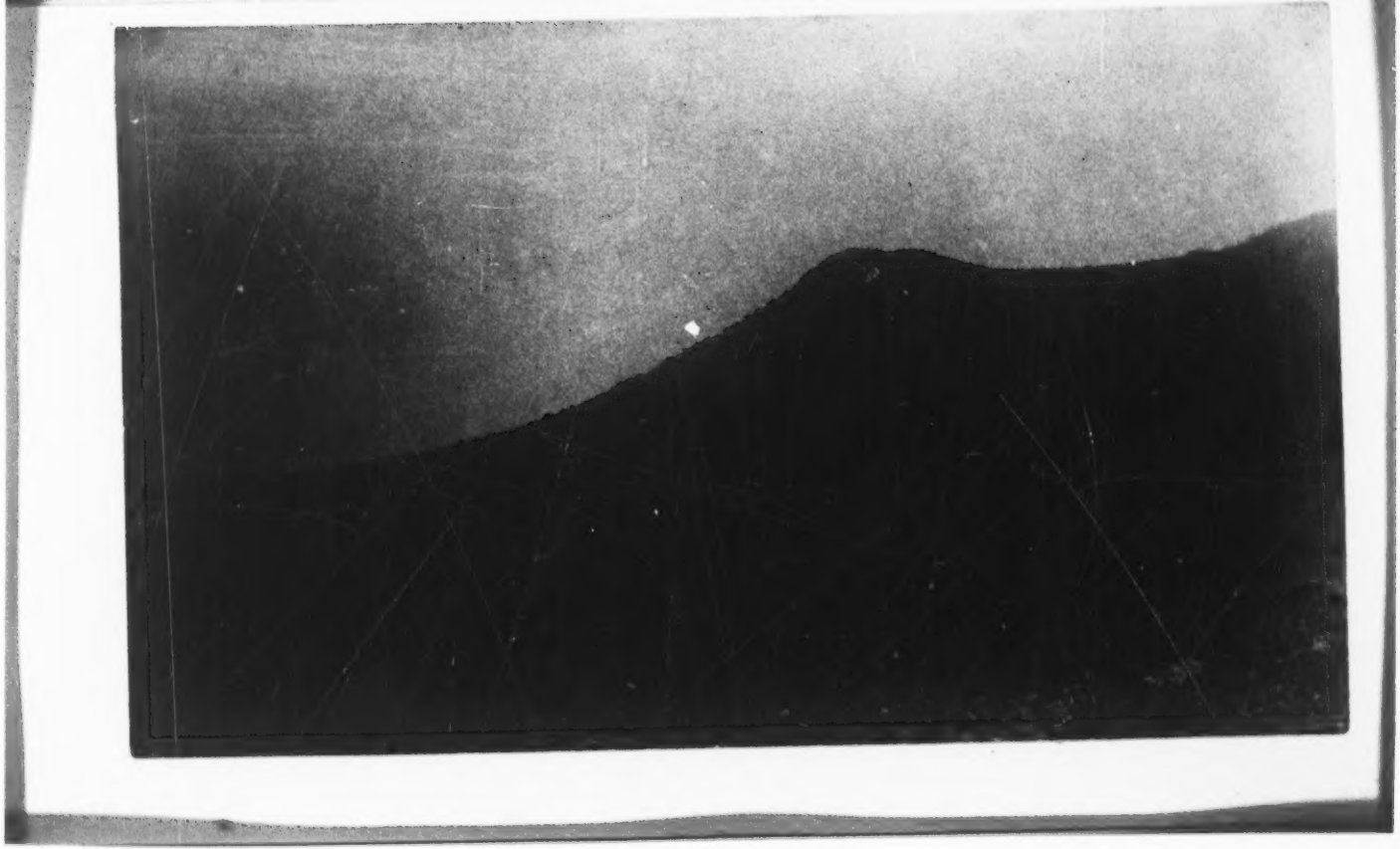
HUACHUCA M'TS. A.T. PASS

SAN RAFAEL RANCH
236

SAN RAFAEL
RANCH.
235.

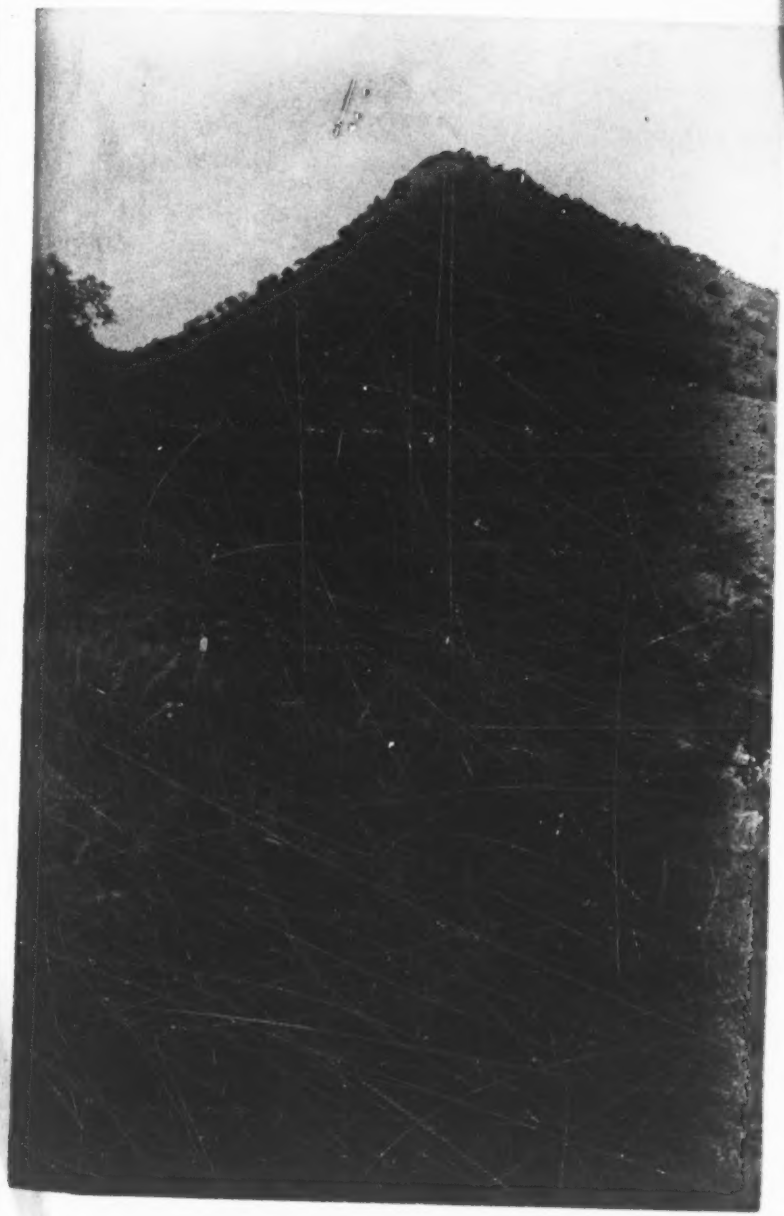
HUACHUCA MTS AT 249

HUACHUCA MTS. A
2 3

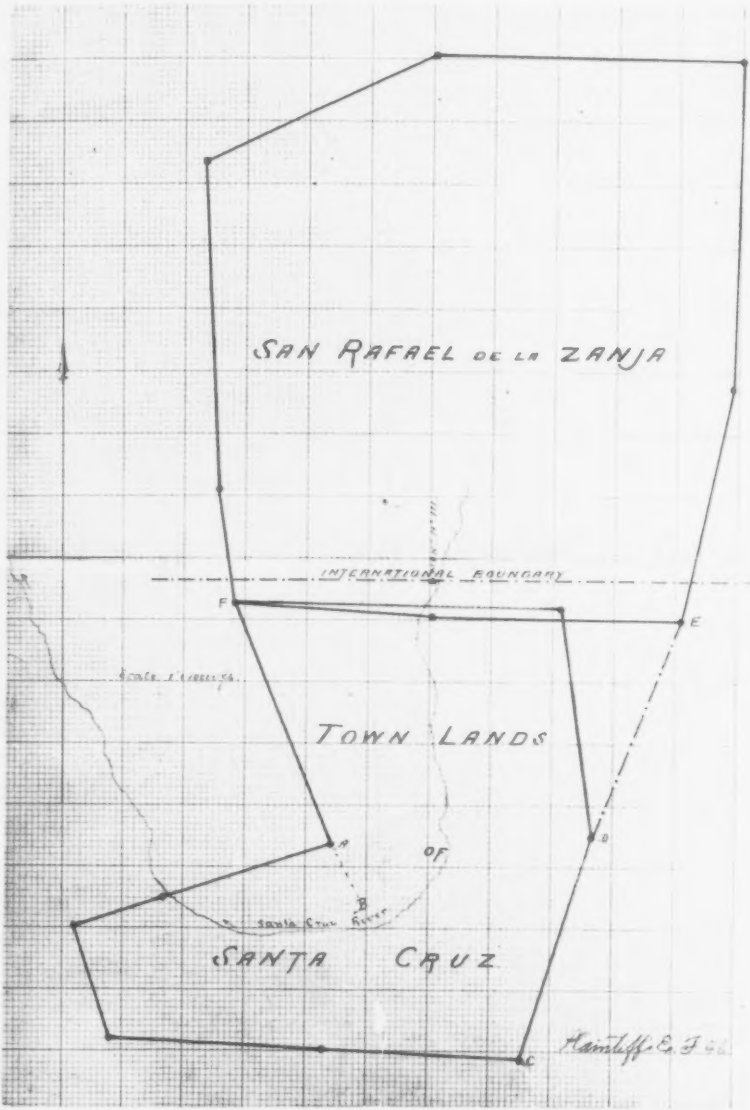


HUACHUCA MTS. A.T.

SAN RAFAEL RANCH AT
276.



FRONT


SAN RAFAEL DE LA ZANJA
INTERNATIONAL BOUNDARY
F
E
TOWN LANDS
OF
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SANTA CRUZ
C

exterior boundaries of a certain Mexican grant or concession of land, situated mostly in the county of Pima, Territory of Arizona, U. S. A., and partly in the State of Sonora, Republic of Mexico, known as the "San Rafael de la Sanja," which grant is recorded in Book No. 3 of Transcribed Records, from page 65 to 76 in the recorder's in Tucson, in the county of Pima, Arizona, and which grant is more particularly described as follows: Commencing at a large red hill or mountain situated about three miles northwest of the town of Harshaw; thence running easterly terminating at the point of the Sierra del Cobre (Copper Mountain) at a spring known as El Caricillo at a point of the Huachuca Range of mountains; thence southerly to the corner monument of the lands of the presidio of Santa Cruz; thence westerly to a point beyond San Antonio where there are two small mountains which limit the eastern side of the Egidos of Santa Cruz, and which point serves as the corner monument of this tract of land; thence running northerly along the range of the Sierra de la Plomosa to a high mountain southwest of the hill called El Colosa; thence northerly to the place of beginning.

My said attorney is authorized to sell mill sites, town sites, town lots, mines and mining claims, and lots of land not embracing more than one hundred and sixty acres of land in any one tract or body; that is to say, he is authorized to sell that amount of land by metes and bounds, but he is not authorized to sell an undivided interest in said grant nor more than one spring of water without the consent of the undersigned.

And I further authorize my said attorney to bring any and all suits in my name that he may deem advisable in reference to said land or any portion thereof or for minerals therein contained, and also to prosecute in my name any and all persons that he may think advisable for any and all trespasses upon said land committed either in the past or future, and I authorize him to sign and deliver any and all instruments necessary to carry out the foregoing powers.

It is, however, distinctly understood between myself and my said attorney that this power is given in order the more fully to carry out the intentions, stipulations, and agreements contained in a certain bond or contract in writing made and entered into on the 5th day of Nov., 1880, signed by Alfred A. Greene and R. R. Richardson, and recorded in Book 2 of Miscellaneous Records, pages 473 to 477, in the recorder's office of the county of Pima, Arizona, hereby ratifying all said attorney.

Signed, sealed, and delivered this 7th day of March, 1881.

ALFRED A. GREEN. [SEAL.]

The words "of Santa Cruz" interlined on the 7 line of the 2d page and words "town lots" interlined on the 16th line of said page both before signing.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 8th day of March, A. D. one thousand eight hundred and eighty-one, before me, G. W. Spaulding, a notary public in and for the county of Pima, personally appeared Alfred A. Green, whose name is subscribed to the annexed instrument as a party thereto, known to me to be the person described in and who executed the said annexed instrument

as a party thereto, and who duly acknowledged to me that he
612 executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] G. W. SPAULDING,
Notary Public.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of R. R. Richardson, April 1st, A. D. 1881, at 12.07 p. m., Book 2, power attorney, pages 103, 104, and 105. Chas. R. Drake, county recorder.

(Endorsed:) Plaintiff's Ex. F 47.

613 F 48.

This agreement, made and entered into this 5th day of November, 1880, by and between Alfred A. Green, party of the first part, and R. R. Richardson, party of the second part, witnesseth: That whereas the above-named parties made and entered into an agreement on the 10th day of June, 1880, which said agreement is recorded in the office of the recorder of Pima County, Arizona Territory, in Book 2 of Miscellaneous Records, on pages 207, 208, 209, and 210; now, in consideration of the interest stipulated in said agreement to be retained by said first party be increased from one-twentieth to one-tenth, as hereinafter expressed and other good and valuable considerations, moving from each party to the other, and the better to carry out their mutual desires and intentions in regard to the property, the subject of said agreement, it is hereby mutually agreed by and between said parties hereto that said contract of June 10th, above named, be and the same is hereby modified and changed in the particulars and to the intent expressed in this agreement, and in all respects and particulars in which the said contract of June 10th is not changed by this agreement the same shall remain and be in force and effect as part of the agreement and understanding of the parties hereto.

1. The contract between the parties is understood to embrace and covery the whole of the grant mentioned in said agreement of June 10, as embraced and defined by the monuments, whether the same be more than sixteen square leagues or not.

2nd. The price to be paid by the second party to the first party for the said grant shall be as follows: If the grant shall be confirmed according to the present understood monuments and boundaries and shall include the mines in the western part of the grant in what is known as Harshaw District and Washington Camp, and if the title and rights to said mines should be confirmed the said second party by the patent of the United States and the final judgment of the courts, then the price to be paid by the second party to the first party shall be two hundred thousand dollars, to be paid in manner following, viz: Fifty thousand dollars less the amounts already paid, and the sums that shall be hereafter paid prior to confirmation as stipulated in this within three months after issuance of the patent, and the remainder in three equal payments,

payable in six, nine, and twelve months after confirmation. If the grant should be confirmed for the whole grant, according to the present understood monuments, and the mines and minerals should be excepted therefrom, or if the grant should be confirmed for the sixteen square leagues or more, then the price to be fifty thousand dollars, the same to be payable in above stated proportions and times, after confirmation and patent, and all payments heretofore made to be deducted therefrom. If this grant should be confirmed for less than sixteen square leagues, then the price to be such part of fifty thousand dollars as the number of leagues confirmed bears to sixteen square leagues, and shall be payable in above stated proportions and times after confirmation and patent, less all prior payments.

3rd. There has been paid prior to this date under prior contracts since June 10, 1880, including that date, the sum of thirty-five hundred dollars, and second party agrees to pay the further sum of fifteen hundred dollars on November 15, 1880, and two thousand dollars on the first day of January, 1881, subject to the terms and conditions of said contract of June 10, in reference to payments to be made prior to confirmation.

4th. Upon confirmation of said grant or such portion thereof as may be confirmed, and the performance by second party of his part of the contract, said first party shall convey to second party all his right, title, and interest in the whole of said grant according to the monuments named in the expediente by a good and sufficient bargain and sale deed, saving and excepting one-tenth interest or part undivided therein and thereof, but this exception shall not apply to the Hardshell mine, the Hardshell Extension mine, the Surveyor mine, and Sotero mine, nor to a mill site to be hereafter selected by the said second party, said mines and mill site to belong exclusively to the said second party, and
614 said first party is to relinquish to him all claim and title thereto.

5th. Said second party agrees to use reasonable diligence to purchase the claims of the Mexican claimants designated in the expediente as "parcioneros," and to purchase the same if it can be done at a reasonable price, say not to exceed eight thousand dollars; such purchase to be for the benefit of both parties hereto in case this agreement is carried out and fulfilled.

6th. The expense of confirmation and of all litigation affecting the title or the right of possession of the grant, or any part of it, or of the mines, or any of them, from and after the date of the original contract, shall be borne by the second party, except that the second party shall not be responsible for the service of G. W. Spaulding, esq., heretofore rendered nor hereafter to be rendered, nor for legal services nor expenses in the case of Southerd vs. Green et al. for foreclosure of mortgage; and said party of the first part shall save said second party harmless from and on account of any and all mortgages and liens and incumbrances on said grant, or any part thereof, by him at any time made or suffered; that said second party shall have the right to pay off and remove any or all such mortgages, incumbrances, or liens if he sees proper, and the amount thereof to deduct from any payment thereafter to be made to said first party.

7th. In case said grant should be confirmed as to quantity and boundaries which exclude the mines, or if the mine should be excepted from the confirmation, or if the confirmation should be for less

than sixteen square leagues, and the right or claim to the sixteen square leagues, or the whole of the grant, according to the monuments, should be affirmed and secured to the second party by the courts, then the price to be the same as though such confirmation had been made by Congress and assured by patent, and in like manner if the mines should be excluded from or excepted out of and by the confirmation and patent, and should be secured to said second party by the courts, the price to be the same as if the same were secured by confirmation and patent, and if before such confirmation, either by Congress or the courts, the second party should realize moneys by sale or compromise of any mines or mining claims within the monument boundaries of said grant, said second party shall pay over the same to the first party, less ¼ of 1% thereof, to be retained by the second party as compensation for making such compromise or sale, and less also the actual expenses thereof, and nine-tenths of the money so paid to the first party shall be applied and credited on account of this contract until the sum of $200,000 shall be received by the first party from all sources, and after said sum shall have been received by the first party all moneys arising from the sale or compromise of mines or mining claims shall be divided between the parties in proportion to their respective interests. It is further agreed that the said second party shall have the right to sell town sites, mill sites, and building lots upon said grant, or any part thereof, and to compromise claims thereto in a like manner as in the case of mines, and the proceeds thereof shall be disposed of and applied in the same manner as above specified in the case of the sale or compromise of mining claims, and upon any sale or compromise of mines, mining claims, town sites, or building lots, said first party shall convey the same to such purchaser or purchasers, or claimants, provided, however, that such sales and compromises shall be made with the concurrence and consent of the first party, and in case said parties can not agree as to the sale and disposition of any such mines, mining claims, town sites, mill sites, or other property, it shall be left to arbitration, each of said parties to choose a disinterested arbitrator, and they to choose a third; such arbitrators to decide whether or not it is the best interest of the parties hereto to make such sale or sales, and both said parties shall be bound by such decision.

It is further agreed that said contract of June 10, 1880, as modified by this contract, shall be held and construed to bind the heirs, executors, administrators, and assigns of the respective parties hereto, and it is hereby further expressly agreed that said agreement of June 10,
615 1880, shall remain in full force and effect in each and every particular not hereby modified or changed, and in future to be the contract to be the parties as hereby changed and modified, and it is further agreed that an agreement made and dated August 10, 1880, whereby said parties changed and modified said agreement of June 10, 1880, is hereby cancelled and annulled, and the said agreement of June 10, 1880, and this agreement shall in no respect be affected or changed by anything contained therein.

In witness whereof the said parties have hereunto subscribed their names to duplicate originals hereof, the day and year first above written.

ALFRED A. GREEN. [SEAL.]
R. R. RICHARDSON. [SEAL.]

TERRITORY OF ARIZONA,
County of Pima, ss:

On this third day of January, A. D. one thousand eight hundred and eighty-one, before me, Moye Wicks, a notary public in and for the county of Pima, personally appeared R. R. Richardson and Alfred A. Green, whose names are subscribed to the annexed instrument, as the parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as the parties thereto, and who duly acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and my official seal the day and year in this certificate first above written.

[SEAL.] MOYE WICKS, *Notary Public.*

Filed and recorded at request of R. R. Richardson, Jan'y 3, A. D. 1881, at 1.30 p. m., Book 2, Mis. Records, pages 473, 474, 475, 476, 477. Chas. R. Drake, county recorder.

(Endorsed:) Filed in the office of the Clerk Court of Private Land Claims May 16, 1899. Jas. H. Reeder, clerk. Plaintiffs' Ex. F 48.

616 F 49.

This agreement, made and entered into on this the 10th day of August, A. D. 1880, by and between Alfred A. Green, party of the first part, and R. R. Richardson, party of the second part, witnesseth: Whereas the said above-named parties made and entered into an agreement on the 10th day of June, A. D. 1880, which said agreement is recorded in the county recorder's office of Pima County, Arizona Territory, in Book 2 of Miscellaneous Records at pages 207-8-9 & 10, and by the terms whereof said second party obligated himself to make certain payments of money to party of the first part, one of which said payments—to wit, the sum of twenty-five hundred dollars—is due this day, and the other payment as therein specified; now, in consideration that said agreement shall not be forfeited for the nonpayment of said sum this day to be paid, and the mutual benefit to both of said parties by continuing said contract in force and effect with such modifications as will enable said party of second part complying therewith, it is hereby mutually agreed by and between said parties hereto that said contract shall be modified in the following particulars and in all other matters and respects be and remain as by the terms thereof, to wit: On the signing of this contract said party of the second part shall pay party of first part the sum of two thousand dollars instead of twenty-five hundred dollars as provided in said former agreement. And the future payments to be made as by the terms of said agreement are changed to read and to be that one thousand dollars shall be paid in thirty days from this date, one thousand five hundred dollars in sixty days from this date, two thousand dollars to be paid in ninety days from this date, fifty thousand dollars to be paid within ninety days after the confirmation of the grant described in said contract, fifty thousand dollars within six months after the confirmation of said grant, fifty thousand dollars within nine months after the confirmation of said grant, and the remainder of the price of two hundred thousand dolla[illegible]cified in

said agreement or contract to be paid within twelve months after such confirmation of said grant, the above payments due after confirmation or on the basis of the confirmation of the sixteen square leagues, and in the event of confirmation being of a less quantity than sixteen square leagues, the said price of said rancho is in proportion thereto as by the terms of said contract provided.

Said contract is further changed to the effect that in case the conditions thereof are performed by the party of the second part the said party of the first part shall convey unto said party of second part his entire interest (instead of nineteen-twentieths) in the following proportions of said grant or rancho, to wit: Those certain mining claims, veins, or lodes of mineral-bearing rock situated in the Harshaw mining district, named and commonly known as the Hardshell, Hardshell Extension, Surveyor, and Sortero mines, and also a mill-site of about five acres, to be hereafter selected by the party of the second part.

Said contract is hereby further changed so as to give said party of the second part, with the concurrence of the party of the first part, the right and authority to negotiate, bargain, and sell any mines of mineral deposits on said grant, or any part or portion thereof, for the uses and purposes of mill sites and town sites, and party of the first part shall make conveyances of any such mines or tracts of land so sold, providing that in case said parties can not agree as to the sale and disposition of any such lands or mines it shall be left to arbitration, each of said parties hereto picking and designating one man, and the two to choose the third man, the three to decide the question whether or not it is for the best interests of the owners of said grant property to make such
617 sale or sales, and both parties hereto are to bound by the decision of such arbitrators; that after paying the necessary expenses incurred in making such sales, the remainder shall be paid over to said party of the first part, nineteen-twentieths of which to be received by him as payment of the installments above specified in the order in which said installments become due. And it is hereby expressly agreed that said afore-mentioned contract is to remain in full force and effect in each and every particular not hereby expressly modified or changed, and in the future to be the contract of said parties as hereby changed and modified.

Signed and delivered this the date first above written. Signed in duplicate. Interlineations made before signing: On page 3, line 15, and line 14, page 5, and cancellation of from and including line 26 on page 5 to and including line 9 on page six.

ALFRED A. GREEN.
R. R. RICHARDSON.

Witness:
J. H. LUCAS.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899. Plaintiff's Ex. F 49.

618 F 50.

This agreement, made and entered into this 10th day of June, 1880, by and between Alfred A. Green, party of the first part, and R. R. Richardson, party of the second part, witnesseth: That said first party agrees to sell to said second party the undivided nineteen-twentieths of all his

right, title, and interest in and to that certain Spanish or Mexican grant called San Rafael de la Zanja, situated principally in Pima County, Arizona Territory, and partly in the Mexican State of Sonora, the said interest and title of the said first party being the interest and title vested in Ramon Romero, his heirs and assigns, under the grant of said lands made by the Mexican Government May 15, 1825, as appears by the expediente bearing that date, which said grant, as appears from the survey made thereof and made part of said expediente, contains sixteen square leagues. Said second party (subject to the conditions hereinafter expressed) agrees to purchase the same and to pay said first party, his heirs and assigns, the sum of two hundred thousand dollars in lawful money of the United States, in manner following: Upon the signing of this agreement, five hundred dollars; twenty-five hundred dollars in sixty days from the date hereof; five thousand dollars in four months from the date hereof, and the remainder, to wit, one hundred and ninety-two thousand dollars, within ninety days after said grant shall be confirmed: Provided, however, That in case confirmation is made by Congress of only four leagues, or of any part less than sixteen square leagues, then the price to be paid by said second party shall be reduced in proportion; that is, said sum of two hundred thousand dollars is agreed upon as the price of sixteen square leagues, and if only four square leagues should be confirmed, then fifty thousand dollars shall be the price thereof, and from which the payments made prior to confirmation shall be deducted, leaving to be paid after confirmation of four square leagues the sum of forty-two thousand dollars. But it is also further agreed, that in case Congress should confirm only four square leagues or any part less than the whole, if the remainder of said grant or any part*y* thereof should be afterwards secured to said second party or his assigns, through the courts or otherwise, then the remainder of said sum of two hundred thousand dollars not theretofore paid to said first party shall become due and payable in ninety days after such confirmation or after such right shall be in any manner secured. Said second party further agrees to pay all taxes assessed upon said land during the continuance of this agreement, including the taxes collectible during this current year. Said second party further agrees to pay all the expenses hereafter incurred in or about the confirmation of said grant, and to prosecute such confirmation with diligence. Said second party further agrees that upon his failure to pay any of the said several sums of money above mentioned as and when they become due and payable this contract and all previous payments shall be forfeit*hee*, and it shall also be the right of said second party to end and cancel this agreement at any time by forfeiting and releasing all payments made and moneys expended prior to such forfeiture and cancellation.

Upon the full compliance *wby* the second party with all the terms of this contract to be by him performed, said first party agrees to convey to said second party, his heirs or assigns, by a good and sufficient deed of bargain and sale, the said nineteen-twentieths of his said title and interest in and to said grant, or so much thereof as shall be confirmed, according to the interest and meaning of this agreement.

In witness whereof the said parties have hereto set their hands and seals the day and year first above written in duplicate.

ALFRED A. GREEN. [SEAL.]
R. R RICHARDSON. [SEAL.]

619 TERRITORY OF ARIZONA,
County of Pima, ss.

On this tenth day of June, A. D. one thousand eight hundred and eighty, before me, John Haynes, a notary public in and for the county of Pima, personally appeared Alfred A. Green and R. R. Richardson, whose names are subscribed to the annexed instrument as parties thereto, known to me to be the persons descri'ed in and who executed the said annexed instrument as parties thereto, and who duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN HAYNES,
Notary Public, Pima County, A. T.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899. Jas. H. Reeder, clerk. Plaintiff's Ex. F 50.

620 F. 51.

R. R. Richardson to Colin Cameron, deed dated May 9, 1883, recorder's office, Tucson, Pima County, A. T. Filed and recorded at the request of Colin Cameron August 21, A. D. 1883, at 3.30 p. m. book 8, Deeds, R. E., page 779 et seq. Chas. R. Drake, county recorder.

Copy of R. R. Richardson's deed to Colin Cameron for the three deeds below named.

This indenture, made the 9th day of May, in the year of our Lord one thousand eight hundred and eighty-three, between R. R. Richardson, of Tucson, Pima County, Arizona, the party of the first part, and Colin Cameron, of Lancaster, Lancaster County, Pennsylvania, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of on one dollar money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part and to his heirs and assigns forever all of the right, title, and interest in the Mexican land grant known and designated as the "San Rafael de la Zanja, in Pima County, Arizona," as derived by him from the conveyances heretofore made to him by the parties hereinafter mentioned, which conveyances are severally recorded in the office of the recorder of Pima County, Arizona, and mentioned below, to wit:

1st. The deed of Luis Bolivar, recorded in book 11, Deeds of Real Estate, page 12.

2nd. The deed of Dolores Osuna de Apodaca, recorded in book 11, Deed's of Real Estate, at page 13.

3d. The deed of Enrique Bergera and wife, Juan Telles and wife, Miguel Signeiros and wife, recorded in book 11, Deeds of Real Estate, at page 745.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

R. R. RICHARDSON. [SEAL.]

Signed, sealed, and delivered in presence of—
G. W. CLUM.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 9th day of May, A. D. one thousand eight hundred and eighty-three, personally appeared before me, G. W. Clum, a notary public in and for the county of Pima, R. R. Richardson, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the same annexed instrument as a party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I hereunto set my hand and affix my official seal the day and year in this certificate first above written.

[SEAL.]

G. W. CLUM,
Notary Public, Pima County, A. T.

621 Copy of bill of sale and deed for cattle, horses, brand, &c., from R. R. Richardson, Gormley & Harrison, to Colin Cameron.

Know all men by these presents, that we, R. R. Richardson, L. H. Gormley, and Alexander Harrison, of Pima County, Arizona, the parties of the first part, for and in consideration of the sum of one dollar, money of the United States of America, to us in hand paid by Colin Cameron, of Lancaster, Lancaster Co., Pennsylvania, the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, his executors, administrators, and assigns, all those certain fifteen hundred head of stock cattle, more or less, now kept and herded upon the Mexican land grant of San Rafael de la Zanja, in said county of Pima and the county of Cochise and the adjoining State of Sonor' Mexico, and also the six horses on said premises, all of said cattle and horses bearing the brand 6T, and also the 6T brand with right to its exclusive use; and the intention therein is that the parties hereto sell and transfer all the stock animals belonging to them, wherever found, bearing said brand, excepting the horses "Pete" and "Jockey" and the mare "Nellie," and the parties of the first part further sell to the parties of the second part all the personal property of the parties of the first part on said San Rafael grant of whatever kind or description pertaining to their business of stock raising thereon.

R. R. Richardson to Colin Cameron. Deed. Recorder's office, Tucson, Pima County, A. T. Filed and recorded at request of Colin Cameron, August 21, A. D. 1883, at 3.30 p. m. Book 8, Deeds, R. E., pages 768 et. seq. Chas. R. Drake, county recorder.

Copy of R. R. Richardson's assignment to Colin Cameron of his agreement with Alfred A. Green.

This indenture, made and executed at Tucson, Pima County, Arizona, this 9th day of May, 1883, by and between R. R. Richardson, of Tucson, Pima County, Arizona, the party of the first part, and Colin Cameron, of Lancaster, Lancaster County, Pennsylvania, the party of the second part, witnesseth: That the party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has sold, assigned, and transferred unto the party of the second part, his heirs and assigns, all his right, title, and interest in the Mexican land grant, situate, *lyig* lying, and being in the county of Pima and in the county of Cochise, in said Territory, in part, and in part in the State of Sonora, Mexico, known and designated as the "San Rafael de la Zanja," as derived by him from his grantor, Alfred A. Green, under a certain agreement, in writing, of date June 10, 1880, between said Green and the party of the first part, and which is of record in the office of the recorder of said Pima County in book 2 of Miscellaneous Records, at pages 207, 208, 209, and 210, and a certain second agreement between said Green and the party of the first part of date November 5, 1880, and which is of record in the office of said recorder in book 2 of Miscellaneous Records, at pages 473, 474, 475, 476, & 477, and which mentioned agreement is in the words and figures following, to wit:

This agreement, made and entered into this 10th day of June, 1880, by and between Alfred A. Green, party of the first part, and R. R. Richardson, party of the second part, witnesseth: That said first party agrees to sell to said second party the undivided nineteen-twentieths of all his right, title, and interest in and to that certain Spanish or Mexican grant, called "San Rafael de la Zanja," situated principally in Pima County, Arizona Territory, and partly in the Mexican State of Sonora, the said interest and title of the said first party being the interest and
622 title vested in Ramon Romero, his heirs and assigns, under the grant of said lands made by the Mexican Government, May 15, 1825, as appears by the expediente bearing that date, which said grant, as appears from the survey made thereof, and made part of the expediente, contains sixteen square leagues. Said second party, subject to the conditions hereinafter expressed, agrees to purchase the same and to pay first party, his heirs or assigns, the sum of two hundred thousand dollars in lawful money of the United States, in manner following: Upon the signing of this agreement, five hundred dollars; twenty-five hundred dollars in sixty days from the date hereof; five thousand dollars in four months from date hereof, and the remainder, to wit, one hundred and ninety-two thousand dollars, within ninety days after said grant shall be confirmed; provided, however, that in case confirmation is made by Congress of only four leagues, or if any part less than sixteen square leagues, then the price to be paid by said second party shall be reduced in proportion; that is, said sum of two hundred thousand dollars is agreed upon as the price of sixteen square leagues, and if only four square leagues should be confirmed, fifty thousand dollars shall be the price thereof, and from which the payments made prior to confirmation shall be deducted, leaving to be paid after confirmation of four square leagues the sum of forty-two thousand dollars. But it is also further agreed that in case Congress should confirm only four square leagues, or any

part less than the whole, if the remainder of said grant or any part thereof should be afterwards secured to said second party or his assigns through the courts or otherwise, then the remainder of said sum of two hundred thousand dollars not heretofore paid to said first party shall become due and payable in ninety days after such confirmation or after such right shall be in any manner secured. Said second party further agrees to pay all taxes assessed upon said land during the continuance of this agreement, including the taxes collected during the current year. Said second party further agrees to pay all the expenses hereafter incurred in or about the confirmation of said grant, and prosecute such confirmation with diligence. Said second party agrees that upon the failure to pay any of the said several sums of money above mentioned as and when they become due and payable, this contract and all previous payments shall be forfeited, and it shall also be the right of said second party to end and cancel this agreement at any time by forfeiting all payments made and moneys expended prior to such forfeiture and cancellation. Upon the full compliance by the second party with all the terms of this contract to be by him performed, said first party agrees to convey said party, his heirs and assigns, by a good and sufficient deed of bargain and sale, the said nineteen-twentieths of his said title and interest in and to said grant, or so much thereof as shall be confirmed according to the meaning and intent of this agreement.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written, in duplicate.

ALFRED A. GREEN. [SEAL.]
R. R. RICHARDSON. [SEAL.]

TERRITORY OF ARIZONA,
County of Pima, ss:

On this 10th day of June, A. D. one thousand eight hundred and eighty, before me, John Haynes, notary public in and for the county of Pima, personally appeared Alfred A. Green and R. R. Richardson, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as parties thereto and who duly acknowledged to me that they executed the same freely and voluntarily
623 and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN HAYNES,
Notary Public, Pima County.

And which said second agreement is in the words and figures following, to wit:

624 This agreement made and entered into this 5th day of November, 1880, by and between Alfred A. Green, party of the first part, and R. R. Richardson, party of the second part, witnesseth: That whereas the above-named parties made and entered into an agreement on the 10th day of June, 1880, which said agreement is recorded in the office of the recorder of Pima County, Arizona Territory, in Book 2 of Miscellaneous Records, on pages 207, 208, 209, and 210; now, in consideration of the interest stipulated in said agreement to be retained by said

first party be increased from one-twentieth to one-tenth, as hereinafter expressed, and other good and valuable considerations, moving from each party to the other, and the better to carry out their mutual desires and intentions in regard to the property, the subject of said agreement, it is hereby mutually agreed by and between said parties hereto that said contract of June 10th, above named, be and the same is hereby modified and changed in the particulars and to the intent expressed in this agreement, and in all respects and particulars in which the said contract of June 10th is not changed by this agreement the same shall remain and be in force and effect as part of the agreement and understanding of the parties hereto.

1. The contract between the parties is understood to embrace and cover the whole of the grant mentioned in said agreement of June 10, as embraced and defined by the monuments, whether the same be more than sixteen square leagues or not.

2nd. The price to be paid by the second party to the first party for the said grant shall be as follows, if the grant shall be confirmed according to the present understood monuments and boundaries, and shall include the mines in the western part of the grant in what is known as Harshaw District and Washington Camp; and if the title and rights to said mines should be confirmed the said second party by the patent of the United States and the final judgment of the courts, then the price to be paid by the second party to the first party shall be two hundred thousand dollars, to be paid in manner following, viz: Fifty thousand dollars, less the amounts already paid and the sums that shall be hereafter paid prior to confirmation, as stipulated in this, within three months after issuance of the patent, and the remainder in three equal payments, payable in six, nine, and twelve months after confirmation. If the grant should be confirmed for the whole grant, according to the present understood monuments, and the mines and minerals should be excepted therefrom, or if the grant should be confirmed for the sixteen square leagues or more, then the price to be fifty thousand dollars, the same to be payable in above-stated proportions and times, after confirmation and patent, and all payments heretofore made to be deducted therefrom. If this grant should be confirmed for less than sixteen square leagues, then the price to be such part of fifty thousand dollars as the number of leagues confirmed bears to sixteen square leagues, and shall be payable in above-stated proportions and times after confirmation and patent, less all prior payments.

3rd. There has been paid prior to this date under prior contracts since June 10, 1880, including that date, the sum of thirty-five hundred dollars, and second party agrees to pay the further sum of fifteen hundred dollars on November 15, 1880, and two thousand dollars on the first day of January, 1881, subject to the terms and conditions of said contract of June 10, in reference to payments to be made prior to confirmation.

4th. Upon confirmation of said grant or such portion thereof as may be confirmed, and the performance by second party of his part of the contract, said first party shall convey to second party all his right, title, and interest in the whole of said grant, according to the monuments named in the expediente, by a good and sufficient bargain and sale deed, saving and excepting one-tenth interest or part undivided therein and

thereof; but this exception shall not apply to the Hardshell mine, the Hardshell Extension mine, the Surveyor mine, and Sotero mine, nor to a mill site to be hereafter selected by the said second party. Said mines and mill site to belong exclusively to the said second party, and
625 said first party is to relinquish to him all claim and title thereto.

5th. Said second party agrees to use reasonable diligence to purchase the claims of the Mexican claimants designated in the expediente as "parcioneros" and to purchase the same if it can be done at a reasonable price—say, not to exceed eight thousand dollars; such purchase to be for the benefit of both parties hereto in case this agreement is carried out and fulfilled.

6th. The expense of confirmation and of all litigation affecting the title or the right of possession of the grant or any part of it, or of the mines or any of them from and after the date of the original contract shall be borne by the second party, except that the second party shall not be responsible for the service of G. W. Spaulding, esq., heretofore rendered nor hereafter to be rendered, nor for legal services nor expenses in the case of Southerd vs. Green et al., for foreclosure of mortgage; and said party of the first part shall save said second party harmless from and on account of any and all mortgages and liens and incumbrances on said grant or any part thereof by him at any time made or suffered; that said second party shall have the right to pay off and remove any or all such mortgages, incumbrances, or liens if he sees proper and the amount thereof to deduct from any payment thereafter to be made to said first party.

7th. In case said grant should be confirmed as to quantity and boundaries which exclude the mines, or if the mine should be excepted from the confirmation, or if the confirmation should be for less than sixteen square leagues, and the right or claim to the sixteen square leagues, or the whole of the grant, according to the monuments, should be affirmed and secured to the second party by the courts, then the price to be the same as though such confirmation had been made by Congress and assured by patent, and in like manner if the mines should be excluded from or excepted out of and by the confirmation and patent, and should be secured to said second party by the courts the price to be the same as if the same were secured by confirmation and patent; and if before such confirmation either by Congress or the courts the second party should realize moneys by sale or compromise of any mines or mining claims within the monument boundaries of said grant, said second party shall pay over the same to the first party, less ¼ of 1% thereof, to be retained by the second party as compensation for making such compromise or sale, and less also the actual expenses thereof, and nine-tenths of the money so paid to the first party shall be applied and credited on account of this contract until the sum of $200,000 shall be received by the first party from all sources, and after said sum shall have been received by the first party all moneys arising from the sale or compromise of mines or mining claims shall be divided between the parties in proportion to their respective interests. It is further agreed that the said second party shall have the right to sell town sites, mill sites, and building lots upon said grant or any part thereof, and to compromise claims thereto in a like manner as in the case of mines, and the proceeds thereof shall be disposed of and applied in the same manner as above specified in the case of the sale

or compromise of mining claims; and upon any sale or compromise of mines, mining claims, town sites, or building lots, said first party shall convey the same to such purchaser or purchasers or claimants, provided, however, that such sales and compromises shall be made with the concurrence and consent of the first party; and in case said parties can not agree as to the sale and disposition of any such mines, mining claims, town sites, mill sites, or other property, it shall be left to arbitration, each of said parties to choose a disinterested arbitrator, and they to choose a third, such arbitrators to decide whether or not it is the best interest of the parties hereto to make such sale or sales, and both said parties shall be bound by such decision.

It is further agreed that said contract of June 10, 1880, as modified by this contract shall be held and construed to bind the heirs, executors, administrators, and assigns of the respective parties hereto; and it is hereby further expressly agreed that said agreement of June 10,
626 1880, shall remain in full force and effect in each and every particular not hereby modified or changed, and in future to be the contract to be the parties as hereby changed and modified; and it is further agreed that an agreement made and dated August 10, 1880, whereby said parties changed and modified said agreement of June 10, 1880, is hereby cancelled and annulled, and the said agreement of June 10, 1880, and this agreement shall in no respect be affected or changed by anything contained therein.

In witness whereof the said parties have hereunto subscribed their names to duplicate originals hereof, the day and year first above written.

ALFRED A. GREEN. [SEAL.]
R. R. RICHARDSON. [SEAL.]

TERRITORY OF ARIZONA,
County of Pima, ss.:

On this third day of January, A. D. one thousand eight hundred and eighty-one, before me, Moye Wicks, a notary public in and for the county of Pima, personally appeared R. R. Richardson and Alfred A. Green whose names are subscribed to the annexed instrument, as the parties thereto, personally known to me to be the persons described in and who executed the said annexed instrument as the parties thereto, and who duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and my official seal the day and year in this certificate first above written.

[SEAL.] MOYE WICKS,
Notary Public.

Filed and recorded at request of R. R. Richardson Janv. 3, A. D. 1881, at 1.30 p. m., Book 2, Mis. Records, pages 473, 474, 475, 476, 477. Chas. R. Drake, county recorder.

627 Together with the possession of the said premises as now held by the party of the first part and all and every part thereof with the tenements, hereditaments, and appurtenances thereunto belonging and appertaining.

There is excepted from this conveyance, however, the following lode mining claims and mill sites: Leviathan, Game, Princess, Giant, Kate

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Oil City, and Chief mining claims, situated in Red Rock mining district, Pima County, Arizona; Hardshell and Hardshell Extension mines and mill site in Harshaw mining district, Pima County, Arizona, and also a mill site in the said Red Rock mining district.

And the party of the first part warrants to the party of the second part that he has in all respects complied with the terms and conditions of his said contracts with said Green so far as the same have become due to the date hereof.

And by the acceptance of this conveyance and assignment, the party of the second part for himself, his heirs, and assigns undertakes and assumes to carry out all the terms and conditions of said agreement between the party of the first part and said Green, which may hereafter become due.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year herein first above written.

R. R. RICHARDSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. W. CLUM.

TERRITORY OF ARIZONA,
County of Pima, ss.

On this ninth day of May, A. D. one thousand eight hundred and eighty-three, personally appeared before me, C. W. Clum, a notary public in and for the county of Pima, R. R. Richardson, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed the said annexed instrument as a party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] C. W. CLUM,
Notary Public, Pima County, A. T.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899. Plaintiff's Ex. F. 51.

(Here follows photographic copy of map marked page 628.)

629 EXHIBIT F 53.

Don JOSE MARIA MONTOYA, a witness introduced by claimants, being duly sworn by the surveyor-general, testified as follows:

Questions by claimants' attorney, C. LINDLEY:

Ques. 1. What is your name, age, occupation, and place of residence?

Ans. My name is Jose Maria Montoya; age, 58 years; reside in Santa Cruz, Sonora, and by occupation am a ranchero. I was born and always resided in Santa Cruz.

Ques. 2. Do you know the rancho of San Rafael de la Zanja?

Ans. Yes, sir; and it is situated north and adjoining the pueblo of Santa Cruz and on the head of the Santa Cruz River.

Ques. 3. Did you know the parcioneros mentioned in the grant, or any of them?

Ans. I knew some of them, but not all; and the list of the parcioneros has been lost or destroyed. I think there were some twenty or thirty parcioneros.

Ques. 4. What part of the purchase money did the parcioneros pay to the Mexican Government?

Ans. I do not know the portion each paid. My father and two grandfathers were parcioneros. I know that all the parcioneros paid something, but do not know how much.

Ques. 5. State what you know or recollect about the first occupation of the grant by the grantees, and how much stock, if any, were placed upon the ranch by them.

Ans. I know that the ranch was well occupied by the grantees in 1834 with much stock—as many as several thousand cattle and many horses, corrals, houses, and residents—and this stock was driven off by the Apaches, and by the year 1843 all stock was driven away or killed by them, and I also know that many of the rancheros were killed, as many as thirty having been killed at one time at a place called "La Boca de la Noria," near the southern boundary of the rancho.

630 Ques. 6. How many buildings are now on the rancho which were placed there by the grantees and their heirs?

Ans. There are now six buildings occupied and habitable, and the ruins of many others, all of which were built by the grantees and their heirs.

Ques. 7. About what was the number of hostile Indians ranging along the frontier in the region of country within the jurisdiction of Santa Cruz from 1834 to 1843?

Ans. I can not say just how many, but from time to time Santa Cruz was attacked by from fifty to seven hundred, and that the number ranging through that region was from 300 to 6,000.

Ques. 8. Was it ever safe for families to establish themselves and reside upon said San Rafael rancho after 1834, on account of Indian invasions?

Ans. It was not safe at any time after 1834.

Ques. 9. Were the massacres of San Rafael, Babocomari, Tierrenato, Santa Barbara, San Lazaro, Cocospari, and Patagonia one and part of the same general Indian war in that section of the country?

Ans. They were.

Ques. 10. Do you know where the place called "La Noria" is particularly situated in the grant?

Ans. It is situated on the southern part of the rancho, near the international boundary line, a little more than a mile west of the Santa Cruz River.

Ques. 11. Do you know the place described as the center of said rancho and called "La Zanja;" and if so, where is it?

Ans. It is on the river, in the center of the valley, and in the field of Slaven and Fleming, and the point at which the water first rises in the river.

Ques. 12. Do you know the center monument on the south line of the grant?

631 Ans. I do know it, and it is at La Boca Canada del Potrero, and I have known it always, and it has always been recognized as such; and I also know the corner monuments.

Ques. 13. How much of the distance over the rancho from the center to the south line is there running water, and over how much of it is there no running water?

Ans. The water rises and sinks at different places, and more than half the distance, in the aggregate, there is running water.

Questions by the SURVEYOR-GENERAL:

Ques. 1. Do you know whether there are mines or minerals on the said rancho of San Rafael de la Zanja?

Ans. There are mines and minerals in the western part of the rancho, I think, including the Patagonia, Denazno (Harshaw), Washington, and San Antonio.

J. MA. MONTOYA.

Sworn and subscribed to before me this 26th day of April, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,
U. S. Sur. Gen'l.

632 Don ALEJANDRO APADACO, a witness called by claimants, being duly sworn by the surveyor-general, testified as follows:

Questions by C. LINDLEY, attorney for claimants:

Ques. 1. What is your name, age, residence, and occupation?

Ans. My name is Alejandro Apadaco; age, 47 years; place of residence, Santa Cruz, Sonora, and am a farmer.

Ques. 2. Are you one of three commissioners charged with the care of the rancho of San Rafael de la Zanja on behalf of the numerous claimants of said rancho?

Ans. I am.

Ques. 3. From your earliest recollection do you know if the heirs of the parcioneros not named in the grant, and Romero or his heirs, have united in the general administration of the property?

Ans. They have acted in harmony in the administration of said property.

Ques. 4. How much money, in the way of taxes on this rancho, has been paid to the American Government; and have all the parcioneros united in making up the amount of said taxes?

Ans. The amount paid is $1,194.54, as shown by the receipts of the tax collector of Pima Co., Arizona, herewith presented to the surveyor-general for examination, and all parties interested, contributed to the payment of the same.

Ques. 5. Was your father one of the parcioneros referred to in said grant?

Ans. He was.

Ques. 6. Was Don Ignacio Telles one of the parcioneros referred to in said grant?

Ans. He is; and is said to be the only surviving one, who is now about ninety years of age.

Questions by the SURVEYOR-GENERAL:

Ques. 1. Do you know whether there are any mines or miner-
633 als in the lands of the said rancho of San Rafael de la Zanja?

Ans. Yes, sir; there are the Patagonia, Durazno, Washington, and San Antonio mines.

Ques. 2. How many leagues of the said grant contain running water?

Ans. I can not say; perhaps the half, more or less.

his
ALEJANDRO x APADACO.
mark

Sworn to and subscribed to before me this 26th day of April, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,
U. S. Surveyor-General.

634 JESUS DOMINQUEZ, a witness called by the claimants, being duly sworn by the surveyor-general, testified as follows:

Questions by C. LINDLEY, attorney for claimants:

Ques. 1. What is your name, age, place of residence, and occupation?

Ans. My name is Jesus Dominquez; 41 years of age; reside in Santa Cruz, Sonora, where I was born and have always lived, and by occupation am a farmer.

Ques. 2. Do you know the rancho of San Rafael de la Zanja, and if so, where is it situated?

Ans. I know it, and it adjoins the pueblo lands of Santa Cruz.

Ques. 3. Are you one of the heirs of one of the parcioneros mentioned in the grant?

Ans. I am; my grandfather was one of the parcioneros; my father and one of my brothers were killed by the Apache Indians on the same day, and another brother was wounded by an arrow.

Ques. 4. Do you remember the massacre on the said San Rafael ranch near the mouth of "La Noria"?

Ans. I do remember it. I do not remember the year, but I saw the bodies brought to the pueblo. Father Aldie was among the murdered in this massacre.

Ques. 5. Was it safe for persons to maintain themselves separately on the San Rafael ranch during the period of Indian hostilities?

Ans. It was not possible.

Ques. 6. Did the parcioneros and their heirs exercise all the care over said property they could consistent with safety during the period of Indian hostilities?

Ans. They did.

Questions by the SURVEYOR-GENERAL:

Ques. 1. Do you know whether there are mines or minerals in
635 or on the lands of said rancho of San Rafael de la Zanja?

Ans. I think there are some mines on the north within the rancho.

his
JESUS x DOMINQUEZ.
mark

Sworn to and subscribed before me on this 26th day of April, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,
U. S. Surveyor-General.

636 JAVIER DOMINQUEZ, a witness called by the claimants, being duly sworn by the surveyor-general, testifies as follows:

Questions by C. LINDLEY, attorney for claimants.

Ques. 1. What is your name, age, place of residence, and occupation?

Ans. My name is Javier Dominquez; 47 years of age; reside in Santa Cruz and have lived there all my life, and by occupation am a farmer.

Ques. 2. Are you one of the heirs of the parcioneros of the rancho of San Rafael de la Zanja?

Ans. I am; my grandfather was one of the parcioneros of said rancho.

Ques. 3. How many years back can you remember as to the condition of the rancho, the stock upon it, and its occupation?

Ans. I can remember since the year 1843, and in that year there were over two thousand head of animals on it, but at that time they had diminished very much because of the hostilities of the Indians.

Ques. 4. Do you remember the massacre of the San Rafael at which Father Aldie was killed; and if so, where was it?

Ans. I do remember it, and it occurred in 1843.

Ques. 5. In the general management of the San Rafael ranch had each of the parcioneros the right to place stock on the ranch in common with the other parcioneros; and if so, did they so place their stock?

Ans. They did have such right and they did so place them.

Ques. 6. Was there from your earliest recollection a harmonious use of said ranch in common by all the parcioneros in the manner above stated?

Ans. They did so occupy it from my earliest recollection, and there was no differences among them. They had to live like a family of brothers, among other reasons because the Apaches were so hostile.

637 They paid their taxes on the ranch in proportion to the amount of stock each had upon said rancho.

Ques. by the SURVEYOR-GENERAL:

Ques. 1. Do you know whether there were any mines or minerals within the boundaries of said rancho of San Rafael de la Zanja?

Ans. I think there were.

his
JAVIER x DOMINQUEZ.
mark.

Sworn to and subscribed before me this 26th day of April, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,
U. S. Surveyor-General.

638 F. 54.

This indenture, made the sixth day of September, in the year one thousand eight hundred and eighty-four, between Alfred A. Green, of the city, county, and State of New York, and Dolores L. Green, his wife, parties of the first part, and William C. Jones, of the same place, as trustee for himself and others, party of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of one hundred thousand dollars ($100,000) lawful money of the United States of America to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt

whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to his successors and assigns forever all that certain piece, parcel, or tract of land containing by estimation about one hundred and forty (140) thousand acres, known as the "Rancho San Rafael de la Zanja," situate, lying, and being partly in southern Arizona and partly in northern Mexico (that is to say, a portion of said tract is situate in the southerly part of the Territory of Arizona and the remaining portion of said tract is situate in the northern part of the Republic of Mexico) and being the premises which were formerly vested in Ramon Romero by the Government of Mexico about May 15, 1825, as appears by the expediente bearing date on that day and now of record in the office of the county recorder of Pima County, in the Territory of Arizona, to which said record, for a fuller and more definite description of said rancho, reference is hereby made; excepting and reserving out of this conveyance, however, a certain portion of said tract, containing twenty-five (25) acres heretofore conveyed by said parties of the first part to the Yankee Smelting Company; also, a certain portion of said tract, containing eighty (80) acres, heretofore conveyed by said Alfred A. Green to Mrs. Mary Harrison, and also a certain portion of said tract, containing twenty (20) acres, heretofore conveyed by said Alfred A. Green to Mrs. Matilda Elder; it being the intent and purpose of both of the parties hereto, respectively, that with the exception of and excluding the said above-mentioned three (3) parcels of land of eighty acres, 20 acres, and 25 acres, respectively, in all 125 acres), this deed is to and does embrace, cover, and convey the whole of the grant described in the expediente hereinbefore mentioned and embraced within and defined by the stationary monuments, whether the same be more than sixteen (16) square leagues or not.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower, and rights of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in or to the above-described premises and every part and parcel thereof with the appurtenances.

639 To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALFRED A. GREEN. [SEAL.]
DOLORES L. GREEN. [SEAL.]
By ALFRED A. GREEN, [SEAL.]
Her Att'y in fact.

Sealed and delivered in the presence of—

BURTON T. BEECH,
297 President St., Brooklyn, N. Y.
JNO. B. LONGLEY,
No. 825 Union St., Brooklyn, N. Y.

STATE OF NEW YORK,
City of New York, County of New York, ss:

On the sixth day of September in the year one thousand eight hundred and eighty-four, before me personally came Alfred A. Green, and Dolores L. Green in the person of Alfred A. Green, her attorney in fact, and to me known to be her said attorney *and* fact, and being, the said Alfred A. Green, personally to me known and known to me to be the individuals described in and who executed the foregoing instrument, individually and as attorney in fact as aforesaid, and acknowledged individually and as attorney in fact as aforesaid, the execution of the foregoing instrument for the purposes therein mentioned.

BURTON T. BEACH,
Notary Public, Kings County (certificate filed in N. Y. Co.).

STATE OF NEW YORK,
City of and County of New York, ss:

I, Patrick Keenen, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Burton T. Beach has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings with his autograph signature, and was at the time of taking the proof or acknowledgement of he annexed instrument, duly authorized to take the same. And, further, hat I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgement to be genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12th day of Sept., 1884.

[SEAL.] PATRICK KEENEN, *Clerk.*

Filed and recorded at request of W. C. Jones, Sept. 23, A. D. 1884, at 8 a. m. Chas. R. Drake, county recorder.

640 TERRITORY OF ARIZONA,
County of Pima, ss:

I, Charles A. Shibell, county recorder in and for the county of Pima, Territory of Arizona, do hereby certify that the annexed and foregoing is a true and correct copy of a deed from Alfred A. and Dolores L. Green to William C. Jones, trustee, dated the 6th day of September, 1874, as appears now of record in my office, in book number 12, deeds of real estate, Pima County, A. T., at pages 483 et seq.

In witness whereof, I have hereunto set my hand and affixed my official seal this 17th day of May, 1899.

CHAS. A. SHIBELL,
County Recorder.

(Endorsed:) Certified copy of deed A. A. Greene and wife to William C. Jones, trustee. In the Court of Private Land Claims. Greene v. The U. S. et al. Plaintiffs Ex. F. 54. Filed in the office of the clerk Court of Private Land Claims, May 16, 1900. Jas. H. Reeder, clerk.

641 F. 55.

This indenture, made the sixth day of September, in the year one thousand eight hundred and eighty-four between William C. Jones, of the city, county, and State of New York, as trustee for himself and others, party of the first part, and Alfred A. Green, of the same place, party of the second part: Whereas the said William C. Jones as such trustee as aforesaid is justly indebted to the said party of the second part in the sum of fifty-nine thousand dollars ($59,000) lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date with these presents in the penal sum of one hundred and eighteen thousand ($118,000), lawful money as aforesaid, conditioned for the payment of the first mentioned sum of fifty-nine thousand dollars ($59,000) lawful money of the United States in five (5) years from the date hereof, with interest thereon at the rate of six per cent. per annum; said interest, however, is not to commence to accrue until from and after the sixth day of September next (1885), but thereafter is to be and become due and payable on the sixth day of September and March of each and every year until the whole of said principal sum of fifty-nine thousand dollars ($59,000), with interest as aforesaid, shall be fully paid and satisfied. The first semiannual payment of said interest to be due and payable on the sixth (6th) day of March, 1886, as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear. Now this indenture witnesseth that the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, aliened, released, conveyed and confirmed, and by these presents doth, grant, bargain, sell, alien, release and confirm unto the said party of the second part and to his heirs and assigns forever, all that certain piece, parcel or tract of land, containing by estimation about one hundred and forty thousand acres (140,000), known as the Rancho San Rafael de la Zanja, situate, lying and being partly in southern Arizona, and partly in northern Mexico (that is to say, a portion of said tract is situated in the southerly part of Arizona and the remaining portion of said tract is situated in the northern part of the Republic of Mexico), and being the same which were formerly vested in Ramon Romero by the Government of Mexico, about May 15, 1825, as appears by the expediente bearing date on that day and now of record in the office of the county recorder of said Pima County, in the Territory of Arizona, to which said record for a fuller and more definite description of said rancho reference is hereby made, excepting and reserving out of the conveyance hereby made, however, a certain portion of said tract containing twenty-five (25) acres heretofore conveyed by said Alfred A. Greene to the Yankee Smelting Company, also a certain portion of said tract containing eighty (80) acres heretofore conveyed by said Alfred A. Green to Mrs. Harrison, and also a certain portion of said tract containing twenty (20) acres heretofore conveyed by the said Alfred A. Greene to Mrs. Matilda

Elder, and being the same premises this day conveyed to the said William C. Jones, as such trustee as aforesaid by deed from the said Alfred A. Greene and Dolores L. Greene, his wife, by deed bearing even date herewith.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues
642 and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of, in, and to the same and every part and parcel thereof with the appurtenances.

To have and to hold the above granted, bargained, and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use and benefit and behoof forever; provided always, and these presents are upon this express condition, that if the said party of the first part, his successors, or assigns shall well and truly pay unto the said party of the second part, his executors, administrators, and assigns the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents and the estate hereby granted shall cease, determine, and be void, and the said William C. Jones, as such trustee as aforesaid, his successors and assigns, do covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond. And if default shall be made in the payment of said sum of money above mentioned or the interests that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon, all and singular, the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefits and equity of redemption of the said party of the first part, his successors or assigns, therein at public auction, according to the act in such case made and provided. And as the attorney of the said party of the first part for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertising and sale of the said premises, rendering the overplus of the purchase money (if any there shall be) unto the said William C. Jones, trustee as aforesaid, of the first part, his successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the said party of the first part, his successors and assigns, and all other persons claiming or to claim the premises or any part thereof by, from, or under him, them, or either of them.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

WM. C. JONES. [SEAL.]
As Trustee.

Sealed and delivered in presence of, and the words "heirs, executors, or administrators" in line No. nine, page two, erased and the words "successors or assigns" interlined, and the words "heirs, executors, and administrators" in line No. fourteen on page two erased and the words "successors and assigns" interlined, and the words "heirs, executors, administrators, or assigns" in line No. five on page three erased, and the words "heirs, executors" in line No. 12 on page three erased, and
643 the words "administrators" on line No. thirteen on page three erased, and the words "heirs and" in line No. fourteen on page three erased and the words "successors and" interlined before execution.

BURTON T. BEACH,
297 President St., Brooklyn, N. Y.

JNO. B. LONGLEY,
825 Union St., Brooklyn, N. Y.

STATE OF NEW YORK,
City and County of New York, ss:

On this sixth day of September, 1884, before me personally came William C. Jones, to me personally known and to me known to be trustee as he described himself in the foregoing instrument, and duly acknowledged to me that he executed the same for the purpose therein mentioned and for no other.

BURTON T. BEACH,
Notary Public, Kings County. Certificate filed in N. Y. Co.

STATE OF NEW YORK,
City and County of New York, ss:

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court of the said city and county, the same being a court of record, do hereby certify that Burton T. Beach has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof of acknowledgment of the annexed instrument duly authorized to take the same, and further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine. I further certify that the instrument was executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12th day of September, 1884.

[SEAL.] PATRICK KEENAN, *Clerk.*

Filed and recorded request of W. C. Jones, September 23rd, A. D. 1884, at 8 o'clock a. m. Chas. R. Drake, county recorder.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Charles A. Shibell, county recorder in and for the county of Pima, Territory of Arizona, do hereby certify that the annexed and above is a true and correct copy of a mortgage from William C. Jones, trustee, et al., to Alfred A. Green, dated the 6th day of September, 1884, and as

appears now of record in my office in Book No. 6, Record of Mortgages of Pima County, A. T., at pages 775 et seq.

In witness whereof I have hereunto set my hand and affixed my official seal this 17th day of May, 1899.

[SEAL.] CHAS. A. SHIBELL,
County Recorder.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899. Jas. H. Reeder, clerk. Plaintiff's Ex. F 55.

644 F 56.

This indenture, made this second day of January, in the year of our Lord one thousand eight hundred and ninety-two, between Rochester Ford (unmarried), of the city of St. Louis, Missouri, temporarily in the city of Tucson, Arizona Territory, the party of the first part, and Harvey L. Christie, of the city of St. Louis, Missouri, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part and to his heirs and assigns forever all that certain lot and parcel of land situate, lying, and being in the county of Pima, Territory of Arizona, and bounded and particularly described as follows, to wit: The Mexican land grant, situate, lying, and being in the county of Pima, Territory of Arizona, and known as the "Rancho San Rafael de la Zanja," being the same premises which were formerly vested in Ramon Romero and other Parcioneros, citizens of the presidio of Santa Cruz, by the Government of Mexico, about May 15, 1825, as appears by the expediente bearing date of that day, and now of record in the office of the county recorder of Pima County, in the Territory of Arizona, to which said records for a fuller and more definite description of said rancho reference is hereby made:

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ROCHESTER FORD. [SEAL.]

Signed, sealed, and delivered in the presence of—

TERRITORY OF ARIZONA,
County of Pima:

Before me, B. W. Tichenor, a notary public in and for said county of Pima, on this day personally appeared Rochester Ford, known to me to be the same person whose name is subscribed to the annexed instrument,

and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 7th day of April, A. D. 1892.

[SEAL.]

B. W. TICHENOR,
Notary Public, Pima Co., Ariz.

Filed and recorded at request of Lautaro Roca, June 17, A. D. 1892, at 1.30 p. m.

CHAS. A. SHIBELL, *County Recorder.*

(Endorsed:) Certified copy of deed from Rochester Ford to H. L. Christie. In the Court of Private Land Claims. Greene v. The U. S. et al. Plaintiffs' Ex. F 56. Filed in the office of the clerk Court of Private Land Claims May 16, 1899. Jas. H. Reeder, clerk.

645 F 56 A.

This indenture, made the twelfth day of September, in the year one thousand eight hundred and eighty-four, between William C. Jones as trustee for himself and others, of the city, county, and State of New York, party of the first part, and the San Rafael Company, of the State of New York, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one million dollars ($1,000,000), lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to its successors and assigns forever, all that certain piece, parcel, or tract of land, containing by estimation about one hundred and forty thousand (140,000) acres, known as the "Rancho San Rafael de la Zanja," situate, lying, and being partly in southern Arizona and partly in northern Mexico (that is to say, a portion of said tract is situate in the southerly part of the Territory of Arizona, and the remaining portion of said tract is situate in the northern part of the Republic of Mexico), and being the same premises which were formerly vested in Ramon Romero by the Government of Mexico about May 15, 1825, as appears by the expediente bearing date on that day, and now of record in the office of the county recorder of Pima County, in the Territory of Arizona; to which said records for a fuller and more definite description of said rancho reference is hereby made, excepting and reserving out of this conveyance, however, a certain portion of said tract containing twenty-five (25) acres, heretofore conveyed by Alfred A. Green (former owner of said tract) to the Yankee Smelting Company; also a certain portion of said tract, containing eighty (80) acres, heretofore conveyed by said Alfred A. Green to Mrs. Mary Harrison; and also a certain portion of said tract, containing twenty (20) acres, heretofore conveyed by said Alfred A. Green to Mrs. Matilda Elder; it being the intent and purpose of both parties to these presents, respectively, that, with the exception of and excluding the said above-mentioned three (3) parcels of land of 80

acres, 20 acres, and 25 acres, respectively (in all 125 acres), this deed is to and does embrace, cover, and convey the whole of the grant described in the expediente hereinbefore mentioned and embraced within and defined by the stationary monuments, whether the same be more than sixteen (16) square leagues or not, and being the same premises which were conveyed to said party of the first part by deed from Alfred A. Green and Dolores L. Green, his wife, bearing date September sixth (6th), 1884:

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in
646 equity of the said party of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WM. C. JONES. [SEAL.]
As Trustee, &c.

Sealed and delivered in the presence of—
JNO. B. LONGREY,
825 Union St. Brooklyn, N. Y.
J. LUTHER BRIGHT,
No. 171 Broadway, New York City, N. Y.

STATE OF NEW YORK,
City of New York, County of New York, ss:

On the twelfth day of September in the year one thousand eight hundred and eighty-four, before me personally came William C. Jones, to me personally known, and to me known to be trustee as he describes himself in the foregoing instrument, and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

[NOTARIAL SEAL.] J. LUTHER BRIGHT,
Notary Public N. Y. Co., Certf. No. 139.

STATE OF NEW YORK,
City and County of New York, ss:

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that J. Luther Bright, whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written was, at the time of taking such proof and acknowledgement, a notory public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary and verily believe that

the signature to the said certificate of proof or acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12th day of Sept., 1884.

[SEAL.] PATRICK KEENAN, *Clerk.*

Filed and recorded at request of W. C. Jones, Sept. 23rd, A. D. 1884, at 8 a. m. Chas. R. Drake, county recorder.

(Endorsed:) Certified copy of deed from Wm. C. Jones, Trustee, to the San Rafael Co. In the Court of Private Land Claims. Greene v. The U. S. et al., plaintiffs, Ex. F. 56.

647 F. 57.

In the district court of the first judicial district of the Territory of Arizona, in and for the county of Pima.

W. W. HOOVER AND THOS. D. SATTERWHITE, doing business as copartners under the firm name and style of Hoover & Satterwhite, plaintiffs,
vs.
THE SAN RAFAEL COMPANY, A CORPORATION, defendant.

This cause came on regular to be heard this 12th day of December, A. D. 1887, Thos. D. Satterwhite appearing as counsel for plaintiffs, and George L. Hood, esqr., for the defendant. A trial by jury having been expressly waived by the counsel for the respective parties, the cause was tried by the court sitting without a jury, whereupon, Thos. D. Satterwhite and H. R. Jeffords were examined as witnesses on the part of plaintiffs, the defense offering no evidence, and the evidence being closed, the cause was submitted to the court for consideration and decision, and it appear' from the evidence adduced that the defendant is justly indebted to the plaintiffs in the sum of twenty-five hundred dollars.

Wherefore by reason of the law and the premises it is ordered, adjudged, and decreed that the plaintiffs do have and recover of and from the defendant, The San Rafael Company, the sum of twenty-five hundred dollars, with interest thereon at the rate of seven per cent per annum from the date hereof until paid, together with said plaintiff' costs and disbursements incurred in this action amounting to the sum of $\$6\frac{75}{100}$ judgment rendered this 12th day of December, 1887.

WM. H. BARNES, *Judge.*

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Clinton D. Hoover, clerk of the district court of the first judicial district of the Territory of Arizona, in and for Pima County, do hereby certify the above and foregoing to be a true and correct copy of the

judgment and decree in said court in the above-entitled action and of the whole thereof.

Witness my hand and seal of said court this 16th day of May, A. D. 1899.

CLINTON D. HOOVER, *Clerk.*

(Cancelled ten-cent revenue stamp.)

SHERIFF'S OFFICE, PIMA COUNTY, TERRITORY OF ARIZONA.

I, M. F. Shaw, sheriff of the county of Pima, Territory of Arizona, do hereby certify that by virtue and in pursuance of the annexed writ of execution, I advertised the property levied upon by virtue of said writ and as follows, to wit: All that certain piece, parcel, or tract of land containing by examination about one hundred and forty thousand (140,000) acres known as the "Rancho San Rafael de la Zanja," situated, lying, and being partly in southern Arizona, Pima County, and partly in northern Mexico—that is to say, a portion of said tract is situated in the southerly part of the Territory of Arizona, and the remaining portion of said tract is situated in the northerly part of the Republic of Mexico, and being the same premises which were formerly vested in Ramon Romero by the Government of Mexico, about May 15, 1825, as appears by the expediente, bearing date on that day and now of record in the office of the county recorder of Pima County, Territory of Arizona, to which said recorder for a fuller and more definite description of said rancho reference is hereby made, excepting a small portion of said tract containing twenty-five acres, heretofore conveyed to the Yanke Smelting Company,
648 also a certain portion of said tract containing eighty acres heretofore conveyed to Mrs. Mary Harrison; also a certain portion of said tract heretofore conveyed to Mrs. Matilda Elder, to be sold by me in front of the court-house door in the city of Tucson, county of Pima, Territory of Arizona, on the first Tuesday of February, to wit, the 7th day of February, 1888, at 11.30 a. m.; that previous to said sale I caused due and legal notice thereof to be posted for more than twenty days successively, immediately before sale in three of the most public places in said county, one being at the door of the court-house, and that on Tuesday, the 7th day of February, 1888, at 11.30 o'clock a. m., the day on which said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for sale, and exposed said premises for sale, in separate parts and parcels, and receiving no bid for any part or parcel thereof, I exposed and sold the said premises in one lot at public auction, according to law, to the highest bidder, when John H. Martin, being the highest bidder, therefore the said premises were struck off by me to the said John H. Martin for the sum of fifty (850) which was the whole price bid, and that I delivered to said purchaser a deed for the property described as above, under section 49, page 338, Revised Statutes of Arizona.

Dated Feb'y 14, 1888.

M. F. SHAW, *Sheriff,*
By C. A. SHIBELL, *U. S.*

Judgment	$2,500.00
Costs in	6.75
Int. from Dec 12, '87 to Feby. 7, '88	27.18
	$2,533.93
Realized from sale	50.00
Remaining due and unpaid	$2,483.93
Accrued costs to A. D	12.00
Amt. due Feby. 7, '88	$2,495.93

SHERIFF'S OFFICE, PIMA COUNTY, TUCSON, A. T.,
January 16, 1888.

By virtue of the annexed writ of execution issued out of the district court, first judicial district in and for Pima County, Territory of Arizona, in the action whereof Hoover & Satterwhite are plaintiffs and the San Rafael Company are defendants, I hereby certify that I have served the same on the 16th day of January, 1888, by levying upon the following described real property as belonging to the said defendants, the San Rafael Company, to wit: All that certain piece, parcel, or tract of land containing by examination about one hundred and forty thousand (140,000) acres known as the Rancho San Rafael de la Zanja, situated, lying, and being partly in Pima County, southern Arizona, and partly in northern Mexico, that is to say, a portion of said tract is situated in the southerly part of Territory of Arizona and the remaining portion of said tract is situated in the northerly part of the Republic of Mexico, and being the same premises which were formerly vested in Ramon Romero by the Government of Mexico about May 15, 1825, as appears by the expediente bearing date on that day and now of record in the office of the county recorder of Pima County, in the Territory of Arizona, to which said records for a fuller and more definite description of said rancho reference is hereby made, excepting a certain portion of said tract containing twenty-five (25) acres heretofore conveyed to the Yankee Smelting Company, also a certain portion of said tract containing eighty (80) acres heretofore conveyed to Mrs. Mary Harrison, and also a certain portion of said tract containing twenty (20) acres heretofore conveyed to Mrs. Matilda Elder.

M. F. SHAW, *Sheriff.*
By C. A. SHIBELL, *Under Sheriff.*

649 In the district court of the first judicial district in and for Pima County, Territory of Arizona.

The Territory of Arizona to the sheriff of the said county of Pima, greeting:

Whereas, on the 12th day of December, 1887, W. W. Hoover and Thos. D. Satterwhite, copartners, recovered a judgment in the said district court of the first judicial district of the Territory of Arizona, in and for the said county of Pima, against the San Rafael Company, for the sum of twenty-five hundred dollars, with interest from Dec. 12th, 1887, at the rate of seven per cent per annum till paid, together with 6.75 costs and disbursements at the date of said judgment and accruing costs,

as appears to us of record. And whereas the judgment roll in the action in which said judgment is entered is filed in the clerk's office of said court, in the said county of Pima, and the said judgment was docketed in said clerk's office in the said county, on the day and year first above written, and the sum of $2,500.00, with interest, from Dec. 12, 1887, at 7 per cent per annum, is now (at the date of this writ) actually due on said judgment. Now, you, the said sheriff, are hereby required to make the said sum due on the said judgment, with interest as aforesaid and costs and accruing costs, to satisfy the judgment of the plaintiff aforesaid, out of the personal property of said debtor, or if sufficient personal property of said debtor can not be found, then out of the real property in your county belonging to the San Rafael Company on the day whereof said judgment was docketed in the said county or any time thereafter, and make return of this writ within sixty days after your receipt thereof, with what you have done endorsed hereon.

Witness Hon. Wm. H. Barnes, judge of said first judicial district of the Territory of Arizona, at the court-house, in the said county of Pima, this 16th day of January, 1888.

Attest my hand and the seal of said court the day and year last above written.

Clerk's fees	$6.75
Clerk's fees accruing	1.25
	$8.00

(Endorsed.) Received execution January 16, 1888, at 11 o'clock a. m. M. F. Shaw, sheriff.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Clinton D. Hoover, clerk of the district court of the first judicial district of the Territory of Arizona, do hereby certify that I have compared the foregoing copy of the execution and sheriff's return in the case of Hoover and Satterwhite vs. The San Rafael Company, and of the endorsement thereupon, with the original record of the same remaining in this office, and that the same are correct transcripts therefrom and of the whole of said original records.

Witness my hand and seal of said court affixed this 16th day of May, 1899.

[SEAL.] CLINTON D. HOOVER, *Clerk*.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899. Jas. H. Reeder, clerk. Plaintiffs' Ex. F 57.

650 EXHIBIT F 59.

(Copy.)

[Seal of the State of Sonora.] [Seal.] Mexican revenue stamps, $1.00.

Victor Aguilar, Tesoredo general del Estado de Sonora, Republica de Mexico, certifico que en el archivo de esta oficina se haya un decumento del tenor siguiente:

"Senor Tesorero General: Los terrenos de San Rafael de la Zanja

mensurados en favor de este vecindario cuyos titulos mantienen en su poder, han tratado siempre de poblorlos y plantar en ellos sus fincas de corrales y demas que son propios a un repoblador; las frecuentes incursiones de enemigos los ha hecho reprimir esta medida: y como de ello puede atribuirseles manana un abandono y resultar por esto una causa para denunciarles el mismo terreno me han propuesto de conformidad consulte a V. S. que a la vez in tentan sus enunciadas fincas en los egidos del presidio a distancia de legua mas o menos siempre que por V. S. se les declare y considere como edificada en los sitios mercenados de que se trata, mientras llega tiempo de que la tierra se pacifique: S. Sa. en vista de lo que llebo expuesto y de que en el entrante mes de febrero quieren comenzar a trabajar contestarme diciendome si les sera valida cualquiera finca plantada en los egidos como clavorada en los terrenos mercenados por las razones que refiero y de no merecer este apoyo quiero tenga la bondad de decirmelo asi para la satisfaccion de estos habitantes y que ellos obren en tal caso del modo mas propio que les paresca. Dios y Libertad, Santa Cruz, enero 27 de 1836. Pablo Frayjo. Sr.
651 Tesorero General Don Jose Maria Mendoza."

Y para que conste doy el presente en la ciudad de Hermosillo, capital del Estada de Sonora, a los viente dias del mes de abril de mil ochocientos noventa y sinco.

V. Aguilar.

(Indorsed:) Plaintiffs E. F 59. Filed in the office of the clerk of the Court of Private Land Claims, May 16, 1899. Jas. H. Reeder, clerk. By , deputy.

652 (Copy.)

Exhibit F 60.

LA CASITA.

Total area	110,238.7	acres
Calida legal	36,876.4	"
Demasias	73,362.3	"

LAS NOGALES.

Total area	26,735.0	acres.
Calida legal	8,919.6	"
Demasias	17,815.4	"

JURIBANA.

Total area	14,758.3	acres.
Calida legal	6,175.0	"
Demasias	8,583.3	"

LAS ANIMAS.

Total area	10,215.4 acres.
Calida legal	6,175.0 "
Demasias	4,040.4 "

MABABI.

Total area	14,449.5 acres.
Calida legal	6,175.0 "
Demasias	8,274.5 "

CERRO TORDILLO.

Total area	13,526.5 acres.
Calida legal	6,175 "
Demasias	7,351.5 "

CUCHUTA.

Total area	82,188 acres.
Calida legal	34,704 "
Demasias	47,484 "

LOS ALAMOS.

Total area	5,459.6 acres.
Calida legal	4,338.4 "
Demasias	1,121.2 "

653

LOS JANEROS.

Total area	24,977.5 acres.
Calida legal	17,353.6 "
Demasias	7,623.9 "

LOS TIMOTEOS.

Total area	20,972.0 acres.
Calida legal	17,353.6 "
Demasias	3,618.4 "

EL ALMAGRE.

Total area	15,457.6 acres.
Calida legal	6,175.0 "
Demasias	9,282.6 "

BACASOBABI.

Total area	8,098 acres.
Calida legal	6,560 "
Demasias	1,538 "

EL CULANTULLO.

Total area	9,874.6 acres.
Calida legal	4,338.4 "
Demasias	5,536.2 "

LOS NOGALES (NEAR ALAMO OR SEVILLA).

Total area	32,752.7 acres.
Calida legal	17,353.6 "
Demasias	15,399.1 "

MUTUTICACHI.

Total area	22,170.7 acres.
Calida legal	17,353.6 "
Demasias	4,817.1 "

CUQUIARACHI.

Total area	17,706.2 acres.
Calida legal	4,338.4 "
Demasias	13,367.8 "

Tueson, Arizona, May 19th, 1899.

Y. BONILLAS.

654 (Indorsed:) Plaintiffs' E. F 60 filed in the office of the clerk, Court of Private Land Claims, May 16, 1899, Jas. H. Reeder, clerk, by , deputy.

655 EXHIBIT F 61.

Ramon Romero por si a y nombre de los vecinos de este Presidio me ha hecho presente el perjuicio que se le sigue de estar en esta capital aguardanda a que se rematen las tierras registradas por Don Manuel Bustillo, y siendo atendible su solicitud lo manifesto a V. pera que advierta al mismo Bustillo concurra por si o por apoderado a presenciar dicho remate para el dia 9 del corriente, entendido que si asi no lo executa, parara en perjuicio suyo procediendose a las almonedas que exije el expresado remate. La cual citacion hara V. a Don Manuel Antunez por el terreno que se le tiene mercenado y a V. reclamado el envio del expediente de la materia en obvio se los perjuicios que resultaran a la Hacienda Publica de mantener poblados los terrenos registrados sin pagar como deben los derechos respectivos. Dios guarde a V. M. A. Arizpe, 4 de enero de 1822. Tgno. de Bustamente.—Sor. Subdelegado de Santa Cruz.

Con oficio de V. de 30 de nobiembre ultimo he recibido el expediente de tierras registradas por Don Manuel Bustillo de esa vecinidad comprendidas de cuatro sitios para ganado mayor en el puesto de San Rafael de la Zanja, quedanda advertido que el diverso oficio de V. de 7 del corriente de que las diligencias del que corresponde a Terrenate de la pertenencia de Don Manuel Antunez se le ha entregado a Don Ygnacio Saenz para que lo presente en esta Yntendencia.

Dios guarde a V. M. A. Arizpe, 11 de diciembre 1821. Ygno. de Bustamante, Sor. Subdelegado del Presidio de Santa Cruz. A los vecinos de este presidio se les ha hecho saber que en junta del almonedas de esta capital, se han rematado los terrenos que comprende el paraje nombrado San Rafael de la Zanja, registrado aquel por Don Manuel Bustillo, y quedo entendido de que mientras se les expide a los primeros el titulo de merced del expresado terreno debo ampararlos en la posesion y senorio que tienen en el sin permitir que por persona ni manera alguna sean perjudicados como previene V. en su oficio de 1° de enero del corriento que contesto. Dios guarde, etc. Santa Cruz, enero 16 de 1822. Sor. Yntendente yterino y Juez policia D. Ygnacio de Bustamente. Rematados el dia de hoy en junta de almonedas de esta capital en favor de los vecinos
656 de ese presidio los terrenos que comprende el paraje nombrado San Rafael de la Zanja registrados por D. Manuel Bustillo de la misma vecinidad, lo ponga en noticia de V. para su conocimiento y que mientras se les expide a los primeros el titulo de merced del expresado terreno los ampare en la posesion y senorio que teiene en el por la composcion y pajas a que fueron admitidos con la Hacienda Nacional del Ymperio Mexicano sin permitir que por persona ni manera alguna sean perjudicados y antes si amparados como el justo y debido. Dios guarde a V. M. A. Arizpe, 18 de enero de 1822. Ygno. de Bustamente. Sor. Subdelegado del Presidio de Santa Cruz.

Escala del valor total de las tierras de San Rafael de la Zanja y dros. cuasados en el expediente instruido para el remate celebrado a favor de los vecinos de Santa Cruz; a saber:

Por el principal valor y dros. respectivos del citado terreno rematado	1,297	6	5
Por papel de partes y un escrito	1	4	0
Gratificacion a tambor y pregonero	2	0	0
Derechos de Yntendencia	20	0	0
Pagados a Bustillo	69	2	6
Por dros. del Promotor Fiscal	6	0	0
Importan	1,396	4	11

Cuya suma antecedente se satisfizo en la forma siguiente:

Con un pagare de	1,192	0	0
Con otro idem de	20	0	0
Con otro idem de	45	0	0
Con otro idem de	80	0	0
	1,337	0	0
Restan	59	4	11

Arizpe, 11 de enero de 1822.

BUSTAMENTE.

Escala de las costas causadas en la mensura, pregones y demas diligencias practicadas en el expediente de las tierras de San Rafael de la Zanja hasta su estado de remision a la Yntendencia con exclusion de los dros. correspondientes al agrimensor A. Saenz:

657	Por el escrito de denuncio	2	4
	Por su providencia	3	0
	Por diez pregones que para el completo de los 30 respectivos dio el alfarez D. Jose Pesqueira	20	0
	Pagado al pregonero por los referidos treinta pregones	7	4
	Por una diligencia	1	0
	Por una notificacion	1	0
	Por tres declaraciones de idoneidad	6	0
	Una notificacion	1	0
	Por un razon		4
	Por cinco pliegos de papel sello 4		2½
	Por el trabajo material de que se compone el expediente	4	0
	Por el pagado a los oficiales medidores, apuntadores y demas. %	22	4
		69	2½

Arizpe, 8 de enero de 1822. Recibi.

MANUEL BUSTILLO.

I hereby certify that the above and foregoing from page 69 to this page 81, inclusive, is a true copy of an instrument in writing filed for record in my office November 25th A. D. 1865, at 1 o'clock p. m., by Col. F. Ronstadt.

(Signed) GREGORY P. HARTE,
Recorder.

658 *Translation of Exhibit F 61.*

Ramon Romero, for himself and in the name of the residents of this presidio, has brought to my notice the hardship (damage) he is suffering on account of being detained in this capital while waiting for the final sale of the lands taken up by Don Manuel Bustillo, and inasmuch as his request should be attended to I report it to you that you may notify said Bustillo to attend, either himself or by an agent (attorney), at said sale on the 9th day of the current month, with the understanding that if he fail to do so he will have to suffer whatever detriment might result to him from the auctions, which must be proceeded with as the said final sale demands. Which summons you will also make (send) to Don Manuel Antunez on account of the land which has been granted him, and of which the transmittal of the expediente in the matter has been requested of you, it being evident that the detriment (damage) which might result to the public treasury from keeping the registered lands stocked without having, as ought to be done, paid the established taxes (fees, imports) thereon. May God have you in your keeping many years. Arizpe, Feb'y 4th, 1822. Ygna'o de Bustamente. To the subdelegate of Santa Cruz.

Together with your favor of the 30th of last November, I have received the expediente of the lands taken up by Don Manuel Bustillo, of this town, consisting of four square leagues for the raising of stock at the place

San Rafael de la Zanja, and I have taken note of your other letter of the 7th inst., which states that the proceedings had with regardto the Terrenate lands pertaining to Don Manuel Antunez have been delivered to Don Ygnacio Saenz, that he may present them to this Yntendencia. May God have you in His keeping many years. Arizpe, Dec. 11, 1821. Ygno. de Bustamente, subdelegate of the presidio of Santa Cruz. The residents of this presidio have been notified that by the commission of auctions of this capital there have been sold the lands composing the place called San Rafael de la Zanja, filed on by Don Manuel Bustillo, and I understand that (hold myself notified) that until the title (grant) be issued to the said first parties I must maintain their possession and control (of said lands) without permitting that any person in any manner
659 may infringe upon said possession, as stated in your favor of Jan'y 1st, of the Ct. year, which I hereby answer. Santa Cruz, Jan'y 16th, 1822. The Yntendente ad interim and police judge, Don Ygnacio de Bustamente. There having been sold this day by the commission of auctions of this capital, in favor of the residents of this presidio, the lands which are comprehended in the place called San Rafael de la Zanja, filed on by Don Manuel Bustillo, of the said town, I hereby notify you thereof for your information, and also that until the title (grant) of the said land be issued to the said residents they must protect their possession and control thereof, which they hold by the adjustment and overbidding (best bid), which were approved by the national treasury of the Mexican Empire, and must not allow any person or anything to infringe upon their rights of possession, but keep them protected, as is just and obligatory. May God have you in His keeping many years. Arizpe, Jan'y 1st, 1822. Ygnacio de Bustamente, the subdelegate of the presidio of Santa Cruz.

Account of the total costs of the lands of San Rafael de la Zanja, and taxes (fees) caused in making the expediente necessary for the final sale held in favor of the residents of Santa Cruz, viz:

For the original price and taxes on the said sold land	1,297	6	5
For paper for the interested parties and one petition	1	4	0
For pay of the drummer and cryer	2	0	0
For fees of the intendencia	20	0	0
Paid to Bustillo	69	2	6
Fees of the Attorney-General (promotor fiscal)	6	0	0
Total	1,396	4	11

Which foregoing sum was paid in the following manner:

With a promissory note for	1,192	0	0
" " " " "	20	0	0
" " " " "	45	0	0
" " " " "	80	0	0
	1,337	0	0
Balance due	59	4	11

660 Arizpe, Jan'y 11th, 1822. BUSTAMENTE.

Account of the costs incurred by the measurements, auctions, and other proceedings in the expediente of the lands of San Rafael de la

Zanja up to its transmittal to the intendencia, less the fees due to the surveyor, A. Saenz:

The document making application (filing on the land) (denuncio)	2	4
For bringing it before the proper authorities	5	0
For ten auctions held by Ensign Don Jose Pesqueira to complete the 30 auctions	20	0
Paid to the crier for the said thirty auctions	7	4
For a document	1	0
For a notification	1	0
For three declarations of ability to stock	6	0
For a notification	1	0
For a memorandum		4
For five sheets of paper of the 4th seal		2½
For making the expediente	4	0
Amount paid to the officers who acted as measurers, notors, etc.	22	4
	69	2½

Arizpe, Jan'y 8th, 1822. Received the above.

MANUEL BUSTILLO.

661 EXHIBIT F 62.

In the district court of the first judicial district of the Territory of Arizona, and having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
COLIN CAMERON, DEFENDANT.

Plaintiff states that defendant is now maintaining, and for a long prior to this date has been maintaining, a certain wire fence, by which he has enclosed a large tract of the public lands belonging to the United States of America subject to entry at the proper land office under the laws of the United States in such cases made and provided.

That the lands enclosed by the fence aforesaid are in the first judicial district of the Territory of Arizona and in the county of Pima, but near the line between said county and the county of Cochise.

That defendant has enclosed, as aforesaid, about 800 acres of the public lands aforesaid without any title or claim or color of title acquired in good faith thereto, and without having first made application to acquire title thereto, or of any part thereof, according to law.

That the lands so inclosed, as aforesaid, are located about three miles west of the Huachuca Mountains and in what is known and called Turkey Creek or Turkey Canon, and about three miles in a westerly direction from the ranch of V. H. Igo, and about one and one-half miles in a southwesterly direction from Clark's camp in Evens mining district. The land inclosed is sometimes called the "French Louie ranch."

That the lands aforesaid are subject to entry under the general laws of the United States applicable to the entry of agricultural lands, and that said lands are agricultural lands.

Wherefore plaintiff asks for a judgment against defendant that the 'aid fence be removed from the lands aforesaid by defendant within five days after judgment, and, if not removed in that time, that the
662 same be destroyed at defendant's costs, and for all costs in this suit, and for all proper orders, and judgment in accordance with the provisions of law.

O. T. ROUSE,
United States Attorney, for Plaintiff.

(Indorsements:) Complaint. Filed Sept. 6, 1886. J. H. Martin, clerk.

663 *Demurrer.*

Title of court and cause.

Defendant demurs to the complaint on file herein, on the ground that the same does not state facts sufficient to constitute a cause of action.

Wherefore defendant asks to be dismissed hence with costs.

JEFFORDS & FRANKLIN,
Attorneys for Def't.

(Indorsed:) Filed Oct. 29th, '86. J. H. Martin, clerk.

Answer.

Title of court and cause.

Now comes the defendant in the above-entitled action, and, answering the plaintiff's complaint on file herein, denies that he is now maintaining, or that he for a long time prior to this date has been maintaining, or that he has ever or at all maintained, a certain wire fence or any fence of any nature or kind whatsoever, by which he has enclosed a large tract or any of the public lands belonging to the United States of America, subject to entry at the proper land office under the laws of the United States, or otherwise, in such cause made and provided or at all.

Denies that he has enclosed, as alleged in the plaintiff's complaint, or otherwise, about eight hundred acres of the public lands aforesaid, or that he has enclosed any of the public lands of the United States of America, without any title or claim or color of title acquired in good faith thereto, or without first having made application to acquire the title thereto and to all thereof according to law.

Denies that the lands mentioned and described in the plaintiff's complaint or any part thereof are subject to entry under the general laws of the United States applicable to the entry of agricultural lands or otherwise, or that said lands or any part thereof are now or ever have
664 been agricultural lands of the United States, or that said lands described in the complaint are now or ever have been public lands of the United States.

ROCHESTER FORD and
JEFFERSON & FRANKLIN,
Attorneys for Defendant.

(Indorsed:) Filed April 18th, '87. J. H. Martin, clerk.

Amended answer.

Title of court and cause.

Now comes the defendant in the above-entitled action, and, by leave first had and obtained, files this amendment to his answer on file in this case.

I.

That on the 15th day of May, 1825, the Mexican Government granted to Ramon Romero and other citizens of Santa Cruz a certain tract of land, known and described as the Rancho San Rafael de la Zanja, now lying and being parti'llay in the county of Pima, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, commencing at a point called San Rafael, the center of said grant, which said point is in the county of Pima, Territory of Arizona, running thence north two leagues to the mesa or table-land, the line terminating on the bank of an arroya which runs towards the "Penasco" at the foot of an oak tree upon which was made a cross and where a pile of stones was placed as a sign; returning to the center there was measured and run thence south two leagues, the line terminating at the north of the canada of the Potrero, at which point is found the landmark of the ejidos, or the common lands of the presidio of Santa Cruz, in said State of Sonora, on the side of the south.

Returning to the center there was run thence east two leagues to a large pile of stones on the mesa land.

Returning to the center and running thence west two leagues to
665 a high mountain situated in the range Sierra de la Plomosa, almost southwest of the hill called "El Colosa," the summit of which is a landmark; run thence east two leagues to the "Sierra del Cobre," (Copper Mountain) where there is a spring known as "El Carricillo."

Return to said mountain, situated southwest of the hill "El Colosa," and run west two leagues to the foot of a red mountain, which is designated as a landmark, and which said red mountain stands in an open place between the "Penasco" and the "Sierra de Senoyta;" run thence south along the "Sierra Plomosa" to a point beyond the San Antonio Pass to two small mountains, which limit the western side of the "ejidos" or the common lands of the said presidio of Santa Cruz, and which point is a corner monument of the Rancho San Rafael de la Zanja; run thence two leagues east to a mountain of stones on the northern boundary of the ejidos or common lands of the said presidio of Santa Cruz, which said mountain is found at the north of the canada of the Potrero, from which point, continuing the square, run east two leagues to the "Jaralito," at the corner monument of the lands of the presidio of Santa Cruz; run thence north four leagues to the spring "Carricillo," being four leagues square, more or less.

II.

The said Ramon Romero departed this life about the year 1873 intestate, and seized at the time of his death of his said interest in said land grant.

That, after the death of said Ramon Romero, Alfred Green purchased

and acquired all the right, title, and interest of all and each of the heirs of said Ramon Romero in and to the above-described Mexican land grant.

That the interest of said heirs acquired by said Green was all the interest ever held by said Ramon Romero in said land grant San Rafael de la Zanja; and the said Alfred A. Green received deeds from each and all of the said heirs of the said Ramon Romero for all of their right, title, and interest in and to all of the land embraced in said grant,
666 being all the interest in said grant ever held or owned by Ramon Romero.

That afterwards, to wit, on the fifth day of November, 1880, the said Alfred A. Green and one Rollin R. Richardson entered into a contract and agreement, in writing, wherein the said Alfred A. Green agreed to sell to Rollin R. Richardson an undivided nine-tenths of all the said Alfred A. Green's right, title, and interest in and to said above-described Mexican land grant, San Rafale de la Zanja, and all the lands embraced in the boundaries thereof, upon certain terms and conditions and considerations therein expressed, and the said Rollin R. Richardson agreed to purchase the same upon the terms expressed in said contract, and said contract and agreement was signed and sealed by said Alfred A. Green and Rollin R. Richardson, all of which will more fully appear from reference to said contract.

And thereupon said Rollin R. Richardson entered upon said Mexican land grant, San Rafael de la Zanja, with the permission of said Alfred A. Green and under said contract, and claimed the right to the possession thereof—to the boundaries as above set forth—and so represented to this defendant.

III.

That afterwards, to wit, on the 9th day of May, 1883, said Rollin R. Richardson, for a valuable consideration, in writing, under his hand and seal, sell, assign, transfer, and set over to this defendant all of the right, title, and interest which he, the said Rollin R. Richardson, had in the contract above set forth between Alfred A. Green and said Rollin R. Richardson, and thereupon, under said assignment of said contract so as aforesaid made by said Rollin R. Richardson to this defendant, and relying upon said representations of said Richardson, defendant entered into possession of said Mexican land grant, San Rafael de la Zanja; that the conditions and considerations of the said contract or agreement above set forth between the said Alfred A. Green and Rollin R. Richardson, the conditions and considerations of the assignment of said contract,
667 made as aforesaid by said Rollin R. Richardson to this defendant, have all and singular been performed and carried out so far as the same are or have become due; and said Rollin R. Richardson covenanted with defendant that he, said Rollin R. Richardson, had performed all the conditions of his contract with said Green, so far as the same were due at the time of said assignment.

That said defendant is the equitable owner of the said undivided nine-tenths interest of said Mexican land grant, San Rafael de la Zanja, so as aforesaid acquired by said Alfred A. Green from the heirs of said Ramon Romero, deceased, and defendant is in the possession thereof and entitled to be in possession thereof.

IV.

That an application is now pending before the Congress of the United States for the confirmation of the said Mexican land grant, San Rafael de la Zanja.

That the same has been examined by the United States surveyor-general of Arizona; that said surveyor-general has reported upon said grant, and has reported that the same is a valid grant, and has recommended that the said grant be confirmed to the legal representatives of Ramon Romero and his associates to the extent of four square leagues; but defendant claims, and all of the persons interested in said claims, and all of the persons interested in said grant prior to defendant's acquiring his said interest therein have always claimed, that said grant should be confirmed to the exterior boundaries thereof, as herein set forth and described in the original expediente, by which the Mexican Government granted said Rancho San Rafael de la Zanja to said Ramon Romero and other citizens of Santa Cruz.

And defendant further avers that he is informed and believes that the honorable surveyor-general for the Territory of Arizona has withdrawn from location and entry all of the lands within the exterior boundaries of said Mexican land grant, San Rafael de la Zanja, as above
668 described; and defendant further avers that he is informed and believes that the Secretary of the Interior of the United States has ordered the surveyor-general of the Territory of Arizona to cause said Mexican land grant, the Rancho San Rafael de la Zanja, to be surveyed according to the original boundaries thereof, as claimed by the defendant and always claimed by claimants of said grant, San Rafael de la Zanja; and defendant further avers that said survey will include in its boundaries all of the land embraced in the enclosure or fence mentioned and described in the complaint.

ROCHESTER FORD and
JEFFORDS & FRANKLIN,
For Defendant.

(Indorsed:) Filed April 18, '87. J. H. Martin, clerk.

669 FINDINGS OF FACT BY THE COURT AND DECREE.

Title of court and cause.

On the 18th day of April, A. D. 1887, this cause came on regularly for a hearing before his honor Judge Wm. H. Barnes, O. T. Rouse, United States attorney for Arizona, appearing for plaintiff, and Jeffords and Franklin and Rochester Ford, esq., appearing as counsel for defendant. A trial by jury was waived by the respective parties and said action was tried before the court without a jury.

After evidence, both oral and documentary, was introduced for plaintiff and defendant and arguments of counsel heard, the cause was submitted to the court for consideration and decision, and the court took the case under advisement, and now, on this 18th day of October, 1887, after due deliberation, the court finds the following facts from the evidence:

I.

That on Feb. 28th, 1880, before the commencement of this action and before the erection of the fence and inclosure of the lands mentioned in the complaint of the Government, the claimants of said lands under said grant filed, under the act of Congress of July 22, 1854, with the surveyor-general of the Territory of Arizona the petition offered in evidence by the defendant; that accompanying said petition was what purported to be a certified copy of the expediente offered in evidence by defendant, from the Mexican Government, of the grant mentioned in said petition, and that said petition asked that the said grant be recommended to Congress for confirmation for all of the lands measured and called for in said expediente and to the exterior boundaries thereof, and that the grantees of said grant and their successors in interest have always claimed that the said grant conveyed all of the land recited as measured in said expediente to the exterior boundaries measured and described in said expediente.

670

II.

That the said surveyor-general reported upon the said alleged grant and reported the same to be a valid grant, and recommended that the said grant be confirmed to the extent of four square leagues, and no more, and that afterwards, and before the commencement of this action, the said surveyor-general caused a preliminary survey to be made of four square leagues, and no more, of said grant, which said survey and report are in words and figures following, viz:

DEFENDANT'S EXHIBIT B.

Petition.

Before the surveyor-general of the United States for the Territory of Arizona.

In the matter of the petition of Francisco Romero and others for confirmation of the grant for the place called San Rafael de la Sanja (Zanja).

Now come Lindley and Corello, attorneys for Francisco Romero, Pedro Romero, Inocencio Romero, Juana de Ortega, Dolores de , and for the claimants as heirs of the persioneros (parcioneros), and show—

I. That in the year 1822 the Spanish and Mexican Governments, through their proper officers, sold for $1,297, 6 6 reals, and 9 granos, at public sale, to Ramon Romero and his parcioneros, a tract of land on the head waters of the Santa Cruz River, known as the San Rafael de la Zanja, containing sixteen square leagues, mostly situated in that portion of the jurisdiction of the presidio of Santa Cruz, of the State of Sonora, which is now included in the Territory of Arizona.

The land lies on the boundary line between Mexico and the United States, about nine-tenths in the latter and one-tenth in the former, and is more particularly described in the expediente or grant for the same executed and delivered in 1825 to said Romero, a true copy of which is attached hereto, marked "Exhibit A," and made a part of this petition. A true translation thereof, marked "Exhibit B," is also annexed hereto and made a part of this petition.

The expediente is duly registered and recorded in Mexico, and
671 those entitled to take and hold the land under the grant were placed in judicial possession thereof, and they and their heirs have ever since had possession thereof, even when harassed by hostile Indians.

II. The tract of land is described as follows: Commencing in the center of the tract at a place called at the time the grant was made "San Rafael," running thence north two hundred cordels, being two leagues, to an oak tree marked with a cross cut thereon and a stone monument at the tree; thence east two hundred cordels, being two leagues, to the NE. corner, marked by a heap of stones; thence south four hundred cordels, being four leagues, to the southeast corner, marked also by a heap of stones; thence west four hundred cordels, being four leagues, to the SW. corner, being on the Puerta de San Antonio, where there are two little hills; thence north four hundred cordels, being four leagues, to a point on the Plomosa Mountains; thence east two hundred cordels, being two leagues, to the place of beginning. The centers of the four exterior lines of the square are marked also by monuments of stone, placed, as were the other monuments mentioned, at the time the land was measured by the Mexican Government. The tract is also bounded on the south by the pueblo lands of Santa Cruz.

III. That the words "cuatro sitios," used in the expediente by the customs, laws, and usages of the Mexican Government at that time mean four leagues square, as distinctly marked by the survey and monuments then made and established, as appears by said expediente, and the judicial possession, occupation, and prescription of said tract has always been coextensive with said survey, and the Mexican Government, down to the time of the cession of Arizona to the United States, has accepted and recognized the survey mentioned in the expediente as fixing the bounds of the tract granted, and has, by said survey and its uniform recognition, the expediente and the large sum of money paid for said tract, given practical construction of said words "cuatro sitios" to be four leagues square.

672 IV. That all the proceedings in connection with said title, from and including the presentation of the petition to and including the final act of grant, were regular and were duly authorized by law, and the respective officers mentioned in this expediente were duly authorized to perform the functions which they respectively purport to have performed in said expediente, and all facts stated in said expediente are true.

V. That the attorneys for the petitioners have found difficulty in ascertaining the exact meaning of the word percioneros mentioned in the grant, and in ascertaining the relation which they bore, if any, to said Romero, the grantee; that there is now no record of the names of such parcioneros, so far as the attorneys can ascertain; nevertheless, there are a very large number of persons who claim to be the heirs of said parcioneros and who claim an interest in said land as such heirs.

VII. That it is impossible, without the aid of a court of general jurisdiction or a special tribunal invested with similar powers, to fully determine as to who are the present rightful owners of said land if the parcioneros, without being named in the grant, were capable of taking and holding under it.

This last question if it must be determined in this proceeding is respect-

fully left for decision by the proper departments without intervention of the attorneys, as between the heirs of Romero and the heirs of those claimed to have been parcioneros.

Most of the adverse claimants unite in this proceeding for purpose of securing confirmation of the grant in such form as will not prejudice any of the parties in the settlement of the question of title as between themselves.

VIII. That the grantees have paid taxes to the American Government on said land whenever demanded since 1853, amounting to about $2,000.00 in all.

Wherefore petitioners demand and pray that all the title be con-
673 firmed and patented to the heirs or legal representatives of the person or persons who are entitled to take and hold under the original expediente for the use and benefit of those persons only who proved to be the true heirs of such ranch.

(Signed) LINDLEY AND CORELLA,
Attorneys for Petitioners.

OFFICE OF THE SURVEYOR-GENERAL,
Tucson, A. T., April 13th, 1887.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[OFFICIAL SEAL.] JOHN HISE,
U. S. Surveyor-General, District of Ariz.

III.

That the fence so maintained by the defendant is within the exterior boundaries as said boundaries are recited as measured in said expediente, and as claimed in the petition filed before the surveyor-general; that the said fence is a mile and a quarter south of the northern boundary, and four miles west of the eastern boundary of land recited as measured in said expediente and as claimed in the said petition, but that it is outside of the four square leagues so as aforesaid caused to be measured by the said surveyor-general, and that it is outside of the four square leagues cornering on the place called al Zanja, the starting point of measurements recited in said expediente.

IV.

That Colin Cameron, the defendant, had succeeded before the commencement of this action or the erection of said fence, to all the *right* right, title, and interest which Ramon Romero ever had in or to said grant, and before and at the commencement of this action was, and ever since has been, in possession of all building on the said four square leagues so as aforesaid caused to be surveyed by said surveyor-general, and is now claiming and has always claimed the title to the possession of all the land embraced within the exterior boundaries as measured in said expediente, and that he has occupied and used all of said land within sa'd exterior boundaries by grazing of cattle upon said lands, claiming
674 title to said land, and that he now has all of the right, title, and interest which Ramon Romero ever had or held in or to said alleged grant.

V.

That the report of the said surveyor-general upon said grant has never been finally acted upon by Congress, and that said claim and said report are still pending before Congress.

VI.

That said lands are in the territory acquired by the United States from the Republic of Mexico under the Gadsden purchase.

VII.

That the petition filed before the surveyor-general, the expediente in the Spanish language accompanying same, and the translation thereof are in words and figures as hereinbefore set forth.

CONCLUSION OF LAW.

And as the conclusion of law from the foregoing facts the court adjudges and decrees that the place where the inclosure was made was public lands, and that the inclosure was therefore unlawful, and that the court further adjudges and decrees that the said fence be removed by the defendant within five days from this date—22d day of October, 1887—and that if the defendant fails to remove said fence within said time the same be removed by the marshal of this Territory at the cost of *of said* said defendant.

WM. H. BARNES, *Judge.*

675 EXHIBIT F 64.

(Copy.)

TUCSON, ARIZONA, *May 7, 1881.*

Hon. J. A. WILLIAMSON,
Com'r Gen'l Land Office, Washington, D. C.

DEAR SIR: I beg leave respectfully to represent that I am owner by purchase of the rancho of "San Rafael de la Sanja," granted in 1825 to Ramon Romero by the Mexican Government, which rancho is situate on the line dividing the Territory of Arizona from the Mexican State of Sonora, the boundaries of which, according to the survey made by the Mexican Government and the landmarks called for in the original field notes of said survey, are shown by the annexed map of an actual survey which I have caused to be made.

I respectfully represent that the title to said rancho has been favorably reported upon by the U. S. surveyor-general of Arizona, but that in his report the quantity confirmed is limited to four square leagues.

I therefore desire, most respectfully, to notify the Land Department that I shall seek before Congress to obtain a confirmation of the actual land contained within the boundaries called for and described in the original title papers, and I respectfully call your attention to the accompanying argument in support of the claim.

I also respectfully protest against the issuing of any patent by the U. S. for lands lying within the boundaries as shown by the accompanying map until the matter be determined.

I remain yours, respe't., R. R. RICHARDSON.

P. S.—I purchased from the gentleman who purchased from the Romero heirs.

R.

(Endorsed:) Plaintiff's Ex. F 64.

676 EXHIBIT F 65.

To CURTIS, EARLE & BURDETT,
Washington, D. C.:

I will send you one hundred dollars as a retaining fee, and on confirmation of the grant by Congress I will send you $250 more. If confirmed for "four leagues square," and I am put in possession by the courts or proper officers, I will pay you $1,000 more within one year after I get possession. If confirmed for everything within the outside boundaries, I will make it $2,000. If for everything within the outside boundaries, including the mineral, I will make it $5,000, and may do better if turns out as well as I expect. If this arrangement suits you, you may telegraph me, and I will forward map and papers.

(Signed) R. R. RICHARDSON.

(Copy.)
(Endorsed:) Plaintiff's Ex. F 65.

677 EXHIBIT F 66.

To CALLAHAN.

SIR: You are hereby notified not to expend money or make improvements upon the grant known as "San Rafael de la Sanja," and you are further notified to remove therefrom and surrender that part thereof now occupied by you. Your prompt compliance with this notice will prevent legal measures being taken for your removal.

Yours, &c.,

ALFRED A. GREEN.
R. R. RICHARDSON.
By HAYNES, MARSH & STILES,
Their Attorneys.

DEC. 30, 1882.

(Endorsed:) Plaintiff's Ex. F 66.

678 EXHIBIT F 67.

To JOHN J. SHEEHY.

Sir: You are hereby notified not to expend moneys or make improvements upon the grant known as "San Rafael de la Sanja," and you are further notified to remove therefrom and surrender that part thereof

now occupied by you. Your prompt compliance with this notice will prevent legal measures being taken for your removal.

Yours, &c.,

ALFRED A. GREEN.
R. R. RICHARDSON.
By HAYNES, MARSH & STYLES,
Their Attorneys.

DEC. 30, 1882.

(Endorsed:) Plaintiff's Ex. F 67.

679 (Copy.)

EXHIBIT F 68.

Rec'd March 23, '83.

I will want $50,000 cash in hand, balance July 1st, with 10% interest added.

The stuff at ranch belonging to Hardshell mine is reserved, consisting of drills, hammers, shovels, picks, anvil, bellows, candles, powder, etc.

Also reserve the wagon, or buggy, as it is private property of Richardson and Gormley.

Also the set new harness for buggy team, as 'tis private property of Richardson.

There are 6 horses on the ranch that goes with it, and 3 that were stolen also goes, & are yours if recovered; 2 saddles and their outfits belong to ranch, also 1 rifle & 1 shotgun.

Igo offered to sell his place to Bruce and Perrin for $1,500. Bruce said they thought of offering him $800, but learned it was on Richardson's grant and would not purchase at all.

Bruce says Igo is fearfully afraid of law; therefore, I think it would be a good idea to serve a notice on him to vacate the ranch, then offer to buy him out.

Bruce says there is talk of putting a wire fence around their grant.

680 (Indorsed:) Plaintiff's E. F 68. Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899. Jas. H. Reeder, clerk, by , deputy.

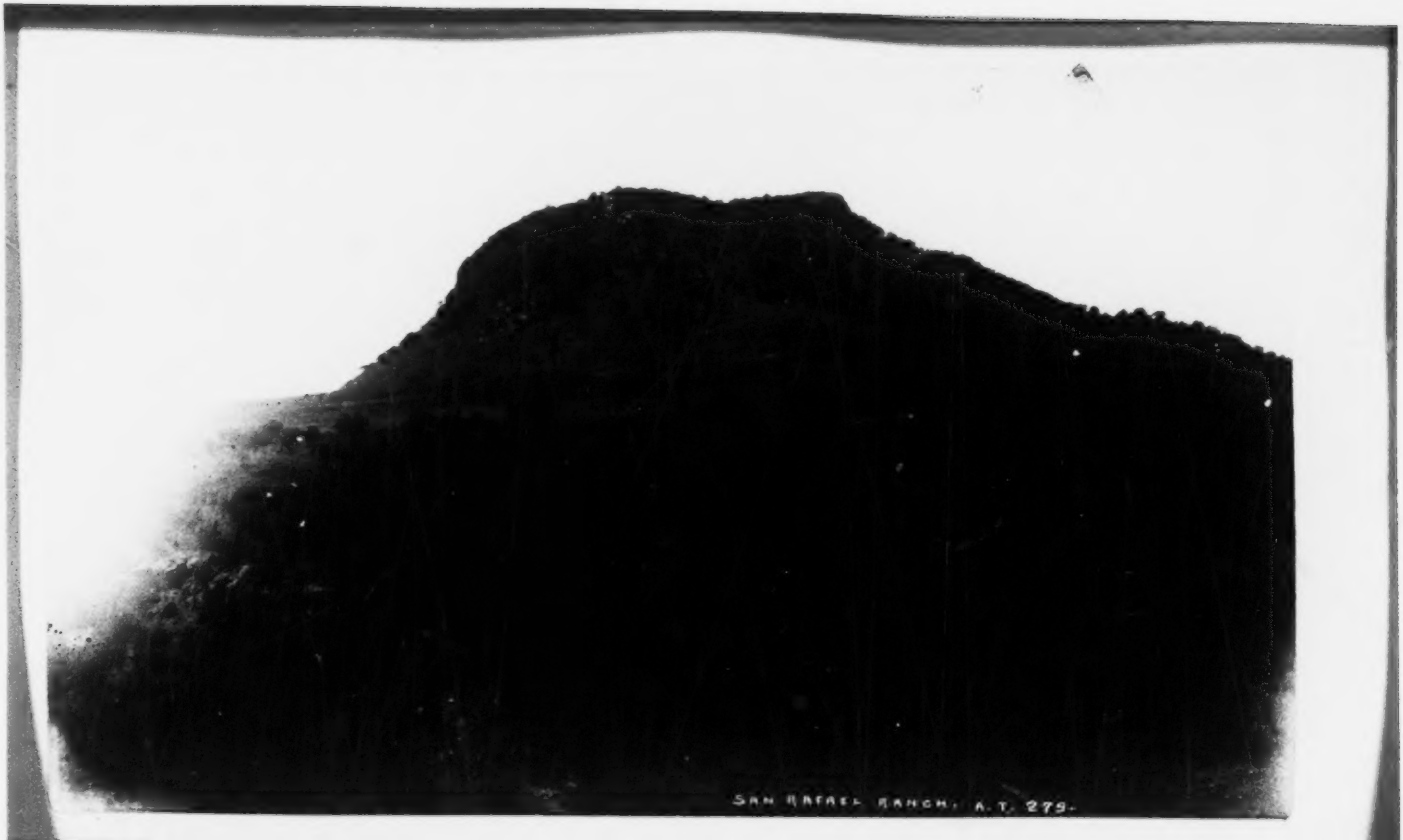
681 EXHIBIT F 69.

TUCSON, A. T., *June 1, 1883.*

COLIN CAMERON, Esq.

DEAR SIR: I learn that the Green Brothers have gone to San Rafael ranch; for what purpose I do not know, but presume to frighten and threaten you so you will buy them off.

Perhaps 'tis foolish of me to write you in regard to your business, and you may not thank me for doing so, but I thought a few words would do no harm and might make you see what would take you some time to find out, that is, that they have the reputation of being tricky and considerable on the bluff; so you should so understand them and use their own medicine; be very indifferent with them, but at same time give them no


SAN RAFAEL RANCH. A.T. 279.

280.

offense if they don't carry matters too far; tell them you would be glad to have them use one-tenth of the ranch, as there is more room than you need, and would like their assistance in taking care of cattle. The Santa Cruz and all the people in the neighborhood would have stood up for me against Green; so if they carry things too far, have Eugene go to Santa Cruz and La Noria and get the people to give them notice to vamoose the ranch, and you can bet they will let you alone. I think they mean to play to make a sale, almost know it; therefore handle them accordingly.

If I do wrong in writing you, please say so and I will do so no more.

Yours, respt.,

R. R. RICHARDSON.

P. S.—I have a deed here for you that go with papers, deed for the Eureka mine, Mowry district, from R. R. to C. C.

Green has just come in and I have had a talk with him, and he talks very nice and perhaps will continue all right. I give him a letter to you.

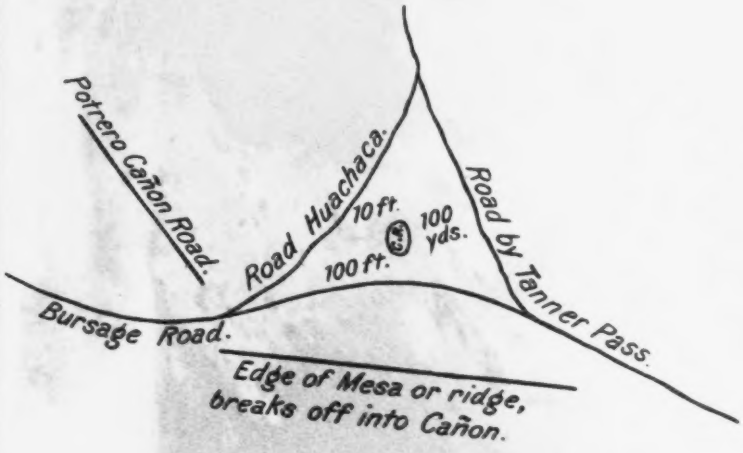
Envelope addressed as follows: Colin Cameron, esq., Harshaw, A. T., "San Rafael Ranch."

(Endorsed:) Plaintiff's Ex. F 69.

682 Photographs. Exh. F 70. Exh. F 71.

(Here follows sketch marked 683.)

683 Exhibit F 72.



No. 351. U. States v. Green. } p. 683.

Plaintiff's Ex. F 72.

Filed in the office of the clerk, Court of Private Land Claims, M
16, 1899. Jas. H. Reeder, clerk.

684 Exhibit F 73. (A photograph.)

685 Exh. F 74. Map.

(Here follows map marked p. 685.)

686 EXHIBIT F 75.

This indenture made the 16th day of October, A. D. 1882, betwe
Enrique Bergera and his wife, Dorotea, of Pima County, A. T., and Ju
Telles and his wife, Asencina, and Miguel Siguerros and his wife, Jua
of Santa Cruz, Sonora Mexico, parties of the first part, and Rollin
Richardson, of Pima County, Arizona Territory, U. S. A., party of t
second part, witnesseth: That the said parties of the first part for and
consideration of the sum of one dollar to them in hand paid, the rece
whereof is hereby acknowleged, have granted, bargained, sold, remis
released, conveyed, and quitclaimed, and by these presents do grant, ba
gain, sell, remise, release, convey, and quitclaim, unto the said party
the second part, and to his heirs and assigns forever, all the right, tit
and interest, estate, claim, and demand, both in law and equity, as w
in possession as in expectation of the said parties of the first part, of,
or to that certain portion, claim, right, and title, on or in the grant
land known as the "San Rafael de la Zanja," situated partly in Pi
County, Arizona Territory, U. S. A., and partly in the State of Sono
Republic of Mexico, about six miles north of the town of Santa Cr
and adjoining the lands belonging to the citizens of Santa Cruz. For
more complete description of said land grant, see records in the recorde
office in Tucson, Pima County, A. T.)

Together with all and singular the tenements and hereditaments
appurtenances thereto belonging, and the rents, issues and profits thereo
and also all the estate, right, title, interest, possession, claim, and dema
whatsoever of the said parties of the first part of, in, or to the premis
and every part and parcel thereof.

To have and to hold all and singular the premises with the appurt
nances and privileges thereto incident unto the said party of the secon
part. And the parties of the first part, for themselves and their heir
doth hereby agree to and with the party of the second part that he ha
full right and power to sell and convey the said premises, and that th
said premises are now free and clear from all incumbrances, sales,
mortgages made or suffered by the said parties of the first part.

SAN RAFAEL RANCH
270.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
ENRIQUE x BERGERA. [SEAL.]
mark
JUAN TELLES.
MIGUEL SIGUEIROS. [SEAL.]
her
DOROTEA x PENA.
mark
her
ASCENCIAN x ZEPEDA. [SEAL.]
mark
her
JUANA x COMANDURAN.
mark

Sealed and delivered in the presence of—
JOHN W. FUQUA.
his
EUGENE x WATSON.
mark

COUNTY OF PIMA,
Territory of Arizona, ss:

On this sixteenth day of October, A. D. 1882, personally appeared before me, John W. Fuqua, a notary public in and for the county of Pima, Territory of Arizona, Enrique Bergera, Juna Telles, Miguel Sigueiros, and their wives, Dorotea, Ascencion, and Juana, being
687 examined by me separately and apart from their husbands, they and the first-named Enrique Bergera, Juan Telles, and Miguel Sigueiros, each for themselves acknowledged to me that they signed the foregoing instrument freely and voluntarily and for the uses and purposes therein mentioned.

The above-named parties are unknown to me, but are identified by the testimony of Eugene Watson (he first being duly sworn by me) to be the persons whose names are subscribed to the foregoing instrument.

Given under my hand this day and date first above written.

[SEAL.] JOHN W. FUQUA,
Notary Public.

The above-described property being the grant heretofore and on the 15th day of May, 1825, made by Juan Miguel Riesgo, comisarrio-general, &c., to Ramon Romero and the other parties and persons mentioned in a certain expediente of said date, which is upon record in the office of the recorder of said county of Pima and Territory of Arizona, in Book No. 3, Old Land Grant Records, at pages 69 to 81, to which record reference is hereby made for a fuller and more accurate description of said real estate.

Filed and recorded at request of Rollin R. Richardson, November 23, 1882, at 2.20 p. m., Book 11, Deeds, R. E., pages 745, 46, and 747. Chas. R. Drake, county recorder.

(Endorsed:) Filed in the office of the clerk, court of private land claims, May 16, 1899. Plaintiff's Ex. F 75.

688 EXHIBIT F 76.

En el pueblo de Santa Cruz a los tres dias del mes de Dbre. de mi ochocientos ochenta y uno, presentes los testigos Tranquilano Cuen y Antonio Barreda, digo yo, Luis Bolivar que he vendido a los Sres. Alfredo A. Green y R. R. Richardson por la cantidad de cien pesos que h recibido a mi entera satisfaccion, una casa que tenga en el rancho d "San Rafael de la Sanja," con sus corrales y todo tragnello que fue hech por mi y le pertence a dicha finca ubicada en "El ojo diagna."

Y para los efectos a que tinbiere lugar estiendo la presente escritur de traspaso en favor de los mencionados Sres. Alfredo A. Green y R. R Richardson para que hagan los husos que les combenza firmando con lo testigos yo mencionados.

LUIS BOLIVAR.

T.:

A. BARREDA.

T.:

FRANQUILINO CUEN.

TERRITORY OF ARIZONA,
County of Pima, ss:

Be it remembered that on this 10th day of December, A. D. 1881, personally appeared before the undersigned, a notary public in and for said county of Pima, Antonio Barreda, to me personally known to be the person whose name is attached to the foregoing instrument of writing as a subscribing witness thereto, who being by me first duly sworn, on his oath states: That Luis Bolivar, the person whose name is subscribed to said instrument as a party thereto, is the party described in and who executed the same; that said Luis Bolivar freely and voluntarily executed said instrument in the presence of said witness, and that said witness subscribed his name thereto as a witness thereof in the presence and at the request of the said Luis Bolivar.

In witness whereof I have hereunto set my hand and official seal at Tucson, in said county, the day and year last above written.

[SEAL.] H. B. LIGHTHIZER,
Notary Public.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of R. R. Richardson, Dec. 17th, A. D. 1881, at 1.30 p. m., Book 11, Deeds of R. E., pages 12 & 13. Chas. R. Drake, county recorder.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899, Jas. H. Reeder, clerk. Plaintiff's E. F 76.

689 EXHIBIT F 77.

En el pueblo de Santa Cruz a los tres dias del mas de Dbre. de mil ochocientos ochenta y uno, presentes los testigos Luis Bolivar y Antonio Barreda, dizo yo, Dolores Osuna vinda de Alejandro Apodaca que he vendido a los Sres. Alfredo A. Green y R. R. Richardson, por la cantidad de cien pesos en moneda Mejicana una casita que tengo en el rancho de

"San Rafael de la Sanja" con sus corrales y accesorios y fue comprada por mi esposo Apodaca a Pedro Romero uno de los duenos de San Rafael. Teniendo Recibido los cien pesos en que he vendido a mi entera satisfaccion, estiendo la presente escritura de tras paso en favor de los Sres. yo menciona dos Alfredo A. Green y R. R. Richardson para los Usos que les como tenga.

DOLORES OSUNA DE APODACA [SUCRXZ].

A. BARREDOS.
LUIS BOLIVAR.

TERRITORY OF ARIZONA,
County of Pima, ss:

Be it remembered that on this 10th day of December, 1881, personally appeared before me, H. B. Leghituzer, a notary public in and for said county of Pima, Antonio Barreda, to me personally known to be the person whose name is attached to the foregoing instrument of writing as a subscribing witness thereto, who being by me first duly sworn, on oath state: That Dolores Osuna de Apodaca, whose name is subscribed to said instrument as a party thereto, is the party described in and who executed the same; that said Dolores Osuna de Apodaca freely and voluntarily executed said instrument for the uses and purposes therein mentioned in the presence of said witness, and that said witness subscribed his name thereto as a witness at the request and in the presence of the said Solores Osuna de Apodaca.

In witness whereof I have hereunto set my hand and notarial seal at Tucson, in said county of Pima, the day and year last above written.

[SEAL.] H. B. LEGHITUZER,
Notary Public.

Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of R. R. Richardson, Dec. 17th, A. D. 1881, at 1.30 P. ?., Book 11, Deeds of R. E., pages 13 & 14. Chas. R. Drake, county recorder.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 16, 1899, Jas. H. Reeder, clerk. Plaintiff's Ex. F 77.

690 EXHIBIT F 78.

(Copy.)

ARISPE, *16 de Enero de 1831.*

Sor. D. RAMON ROMERO.

MUY SOR. MIO Y DE ME APRECIO: La Comisaria gl de este Estado, me tiene encomendada le entrega a los respectivos interesados, de varios titulos de merced y confirmacion de tierras medidas, abaluadas, subhastadas y adjudicadas, pr la hacienda de la confederacion, antes de la clasificacion de rentas, con previa satisfaccion de los cincuenta ps de derechos qe cada uno importa; y hallandose entre dhos titulos el del puesto nombrado San Rafael de la Sanja, q. se remato a favor de V. y los demas vecinos de ese presidio el 10 de Eno de 1822, se lo participo a V. pa. qe. se sirva sacarlo de la Seccion de hacienda de mi cargo, a la

brevedad q. le sea posible, conforme se lo suplica su atento afmo., y seguro Servidor Q. B. S. M.

J. M. M. [RUBRICA.]

Compared May 15, 1899, H. O. F. and W. M. T.

691 (Indorsed:) Plaintiff's E. F 78. Filed in the office of the clerk Court of Private Land Claims May 16, 1899. Jas. H. Reeder, clerk, by , deputy.

692 EXHIBIT F 79.

(Copy.)

APRIL 3, 1883.

Mr. GEO. J. ROSKRUGE,
Tucson, Arizona.

DEAR SIR: Mr. R. R. Richardson tells me that, according to the survey made by Mr. Howe and yourself, that the Igo place is on his land grant.

I don't like his suggestion of dealing with Igo, but will buy Mr. Igo out if he is on the grant if I close trade with Mr. Richardson.

Richardson tells me that the southeast corner takes in Campini, Tanner's garden, and all the Parkers.

Will you look it up, please, holding the attached letter for me until I call?

Yours, truly, COLIN CAMERON.

693 (Indorsed:) Plaintiff's E. F 79. Filed in the office of the clerk Court of Private Land Claims May 16, 1899. Jas. H. Reeder, clerk, , deputy.

694 EXHIBIT F 80.

This indenture, made the ninth day of May, in the year of our Lord one thousand eight hundred and eighty-three, between R. R. Richardson, of Tucson, Pima County, Arizona, the party of the first part, and Colin Cameron, of Lancaster, Lancaster County, Pennsylvania, party of the second part, witnesseth:

That the said party of the first part for and in consideration of the sum of $1, money of the United States of America, to him in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in the Mexican land grant known and designated as the San Rafael de la Zanja, in Pima County, Arizona, as derived by him from the conveyances heretofore made to him by the parties hereinafter mentioned, which conveyances are severally recorded in the office of the recorder of Pima County, Arizona, and mentioned below, to wit:

First. The deed of Louis Bolivar, recorded in book 11, Deeds of Real Estate, page 12.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Second. The deed of Dolores Asuna de Apodaca, recorded in book 11, Deeds of Real Estate, at page 13.

Third. The deed of Enrique Bergara and wife, Juan Teles and wife, Miguel Siqueiros and wife, recorded in book 11, Deeds of Real Estate, at page 745.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainder rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, and to the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] R. R. RICHARDSON.

Signed, sealed, and delivered in presence of—
C. W. CLUM.

TERRITORY OF ARIZONA, *County of Pima, ss:*

On this ninth day of May, A. D. 1883 (one thousand eight hundred and eighty-three), personally appeared before me, C. W. Clum, a notary public in and for the county of Pima, R. R. Richardson, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed the said annexed instrument as a party thereto and who duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] (Signed) C. W. CLUM,
Notary Public, Pima County, A. T.

Filed and recorded at request of Colin Cameron, August 21, A. D. 1883, at 3.30 p. m. Chas. R. Drake, county recorder.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, Charles A. Shibell, county recorder in and for the county of Pima, Territory of Arizona, do hereby certify that the annexed and foregoing is a true and correct copy of the deed from R. R. Richardson to Colin Cameron, dated the 9th day of May, 1883, as appears now of record in my office in book No. 8, Deeds of Real Estate, Pima County, A. T., at pages 779 et seq.

695 In witness whereof I have hereunto set my hand and affixed my official seal this 23d day of May, 1899.

[SEAL.] CHAS. A. SHIBELL,
County Recorder.

(Endorsed:) Filed in the office of the clerk Court o Private Land Claims May 16, 1899. Jas. H. Reeder, clerk. Plaintiff's Ex. F 80.

696 GOVERNMENT'S EXHIBIT No. 1. Map.

(Here follows map, marked page 696.)

697 DEFENDANT'S EXH. 2.

TUCSON, ARIZONA, *7 Sep., 1880.*

Hon. JOHN WASSON,
U. S. Surveyor-Gen'l.

SIR: In accordance with your instructions, I proceeded to the San Rafael Valley, and at the place called La Zanja, where Slaven has now a stock ranche, I found a post marked "S. R. Z." for the center of the San Rafael land grant. From this point I ran north 200 cordels, or 5 miles 16.66 chains, to a point. At 5 miles and 20 chains I found on the right bank of an arroyo an oak tree blazed, the blaze being so old that the bark had grown over it, forming a kind of curtain. I found indistinct marks on it, which might be easily traced into a cross—that is, if it was painted, as was the case of the one marking the south center of the Canoa land grant.

From the above-mentioned point I ran west. At 4 miles the line was on the edge of the mesa land and about ¼ of a mile south of a prominent red hill or butte. The line then ran through low hills, and at 200 cordels, or 5 miles 16.66 chains, I came to the old Santa Cruz road at a point about 2½ miles ENE. of the town of Harshaw & the Hermosa mine. The line, if continued, would in about 2 miles strike the Alta mill site or Serna's camp.

I ascended a high hill at end of line and from observation found that a line run due south would not strike the mineral belt in Arizona, the grant apparently being intended to cover grazing and agricultural lands only.

Herewith is sketch showing north and western boundaries of
698 grant, allowing it to contain 16 square Mexican leagues and the approximate position of Harshaw & the Hermosa mine.

(Signed) GEORGE J. ROSKRUGE,
U. S. Deputy Surveyor.

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk. By , deputy.

699 DEFENDANT'S EXH. 3.

Telephone 1318. 3, 27, '89—1,000.

ROCHESTER FORD,
ATTORNEY AND COUNSELLOR AT LAW.
Rooms 119-121 Laclede Building, St. Louis, Mo., Dec. 18, 1889.

Hon. ROYAL A. JOHNSON,
Surveyor-General of Arizona Territory, Tucson, Arizona.

SIR: As attorney for Colin Cameron, claimant of the private land claim "San Rafael de la Zanja," in Pima County, Arizona, I have the honor herewith to file with you the affidavit of George J. Roskruge, esq., county surveyor of Pima County, Arizona, made October 14, 1889, as to the survey made by him during the months of March and April, 1889, of the tract of land embraced in said private land claim according to the description, measurements, and monuments of the original title papers

thereof. Attached to his affidavit is a map of said survey. Mr. Roskruge makes oath that said survey and map truly and correctly represent the various landmarks and monuments called for and described in the expediente of said private land claim; that the survey made by him, from which survey said map is made, is an accurate, just, and correct survey of said private land claim, and that said survey and map truly and correctly represent the same tract of land described in said expediente as having been surveyed, monumented, and sold by the Mexican State of Sonora, according to the title papers thereof.

I respectfully represent that this letter and the said affidavit and map of survey be filed with the papers in said private land claim, and
700 be taken in connection with and as a part of the petition heretofore presented by the claimants in asking for the confirmation of said private land claim. The land specifically and definitely claimed by Colin Cameron are the lands represented in accompanying map of George J. Roskruge, and are the same lands sold by the Mexican State of Sonora, according to the title papers of the "San Rafael de la Zanja" grant.

Hon. Henry M. Teller, Secretary of the Interior, ordered, on March 3, 1885, that all the lands claimed as covered by this grant, and lying within the claimed boundaries as shown by the monuments of possession, be reserved from sale or other disposal by the Government until final action by Congress on the claim. This order of reservation was affirmed by Hon. L. Q. C. Lamar, Secretary of the Interior, on April 12, 1886, and the same ruling was reiterated by him in his letter to the Commissioner of the General Land Office of September 30, 1886, and May 18, 1887, in which last letter the Commissioner was instructed that he should, "until final action of this Department, withhold lands from entry within the claimed limits of said ranch," and was instructed so to advise the register and receiver at Tucson, Arizona.

In view of these rulings of the Interior Department I respectfully request that all lands covered by the private land claim "San Rafael de la Zanja," as shown by annexed map, be reserved from sale or other disposal by the Government.

Very respectfully,

(Signed) ROCHESTER FORD,
Attorney for Colin Cameron, Claimant.

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk. By , deputy.

701 DEFENDANT'S EXHIBIT 4.

TERRITORY OF ARIZONA,
County of Pima, ss:

George J. Roskruge, of lawful age, makes oath and says, that he is the county surveyor of Pima County, Territory of Arizona, and has been such about seven years; that he is, and for many years has been, familiar with the original title papers of the private land claim "San Rafael de la Zanja," in Pima County, Arizona Territory, having carefully read the translation of the title papers of said claim on file in the office of the surveyor-general for the Territory of Arizona; and that affiant is, and for many years has been, familiar with all the landmarks, calls, monuments, and boundaries of said grant.

Affiant further says that during the months of March and April, 1887, he went carefully over the lands embraced in the said private land claim, for the purpose of making a survey of said claim, and that during the months above mentioned he did make an accurate, careful, and correct survey of said claim, in accordance with the monuments and landmarks described in the title papers thereof, and called for by the same; that he found no difficulty in locating upon the ground all the monuments and landmarks called for and described in the expediente, and that the landmarks, calls, monuments, and boundaries of said private land claim are notoriously well known and unmistakable.

Affiant says that the central point of said grant, as called for in the expediente, is the now abandoned town of San Rafael, the ruins of which are plainly visible, which affiant found at the place called for in the expediente, and answering the description of the same.

702 That the northeast landmark and corner monument of said grant, as called for in the expediente, is at the point of the Copper Mountain, over or beyond a spring known as "El Carricillo," which landmark and monument this affiant found at the place called for in the expediente, and answering the description of the same.

That the northwest landmark and corner monument of said grant, as called for in the expediente, is at the base of a red hill or mountain, which stands in a clear place midway between the "peñasco" and the hills or mountains of the Sonoyta, which landmark and monument this affiant found at the place called for in the expediente, and answering the description of the same.

That the southwest landmark and corner monument of said grant, as called for in the expediente, is at a point immediately beyond or south of the pass of San Antonio, at two little hills, being also the northwest corner monument of the common lands of the presidio of Santa Cruz, which landmark and monument this affiant found at the place called for in the expediente, and answering the description of the same.

That the southeast landmark and corner monument of said grant, as called for in the expediente, is on the "Jarralito" (a little thicket of jara growth), being also the northeast corner monument of the common lands of the presidio of Santa Cruz, which landmark and monument this affiant found at the place called for in the expediente, and answering the description of the same.

That the north center landmark and monument of said grant, as called for in the expediente, is on a mesa on the banks of an arroyo which runs toward the "peñasco," at the foot of an oak tree, which landmark and monument and oak tree this affiant found at the place called for in the expediente, and answering the description of the same.

703 That the south center landmark and monument of said grant, as called for in the expediente, is at the mouth of the cañada of the potrero, at the same point at which is found the landmark of the common lands of the presidio of Santa Cruz, which landmark and monument this affiant found at the place called for in the expediente, and answering the description of the same.

That the east center landmark and monument of said grant, as called for in the expediente, is beyond the said cañada of the potrero, on a contiguous mesa, which landmark and monument this affiant found at the

place called for in the expediente, and answering the description of the same.

That the west center landmark and monument of said grant, as called for in the expediente, is on the summit of a high mountain situated in the range of the "Sierra de la Plomosa," almost southwest of the hill called "El Caloso," which landmark and monument this affiant found at the place called for in the expediente, and answering the description of the same.

Affiant further says that these landmarks and monuments are the landmarks and monuments called for in the expediente; that they are conspicuous and permanent natural objects, and are so identified with conspicuous, permanent, and notorious natural objects, accurately described in the calls of the expediente, that they can be readily located by all persons acquainted with the country, and can not be mistaken for any others, and that they fix the locus and extent of the tract described as measured in the expediente.

Affiant further says that he is familiar with the preliminary survey of said private land claim made by U. S. Deputy Surveyor Solon M. Allis, under instructions from U. S. Surveyor-General Wasson, of May
704 13, 1880, and that to this affiant's personal knowledge said preliminary survey is incorrect in every particular; that it does not conform to any one of the monuments called for in the expediente; that the tract of land surveyed, measured, and monumented according to the original title papers is in a square, but that the preliminary survey is in an irregular shape, having no resemblance whatever to the original grant; that the central point of the original grant, as described in the expediente, is at San Rafael, but that the initial point of said preliminary survey is at a spring (La Zanja) more than half a mile distant from San Rafael; that the corners of the preliminary survey are points arbitrarily chosen by the U. S. deputy surveyor under instructions from the U. S. surveyor-general, and that such corners are not the corners called for in the expediente.

Affiant further says that when said preliminary survey was made it was made without reference to the monuments and landmarks called for in the original title papers, and that when making said preliminary survey the U. S. deputy surveyor did not have with him the original title papers or any copy thereof.

Affiant further says that the map hereto attached, marked "Exhibit A," was made by him after affiant had made the survey of said private land claim, and that it was made from the field notes of said survey, and that it correctly represents the various landmarks and monuments called for and described in said expediente; that the survey made by affiant, from which survey said map is made, is an accurate, just, and correct survey of said private land claim, according to the title papers thereof, and that said survey and map truly and correctly represent the same tract of land described in said expediente as having been surveyed, monumented, and sold by the Mexican State of Sonora, according to the title papers thereof.

(Signed.) GEORGE J. ROSKRUGE.

705 TERRITORY OF ARIZONA,
County of Pima, ss:

Subscribed and sworn to before me by George J. Roskruge, this 14th day of October, 1889.

(SEAL.) (Signed.) BRYAN W. TICHENOR,
Notary Public, Pima County, Arizona.

(Here follows map marked p. 706.)

707 DEFENDANTS' EXH. 5.

Survey of San Rafael land grant. October 20th, 1880.

Commencing at a monument at south center of grant, a monument on small koll south of arroyo that runs W. and south.

Survey in charge of Roskruge and H. G. Howe.

Chainmen, Roskruge and A. Scott. R. R. Richardson present. Tested instrument and at o'clock p. m., with var. 12° E.

Course north 1.40 to Arroyo de Potrero.
44.00 chains to creek drains west.
73.00 chains to river Santa Cruz.
85 " to U. S. B. commission monument, 1 chain west.

Monument in good shape, on mesa, old house 1 chain NE. of boundary commission monument.

87 house stands E. & W. (NE. corner of house on line).

48 chains cross Santa Cruz road bears N. 25 E.–S. 25 W.

(Signed.) G. J. R. 2 miles road NE. & SW. main travel/ed road to Santa Cruz.

11.00 old buildings 10 chains east.

34 road NE. & SW.

42 " " "

2 miles 60 chains, so dark stopped for the night. Note.—At 2 miles 60 chains, so dark could not extend line and stopped for the night; stopped at Slavin's ranch. 21st commenced where left off.

4 miles on rolling mesa west of Broad Valley.

708 5 miles 16 chains 66 links, or 416 chains 66 links 200 cords, on rolling mesa west of valley. Set instrument, turned right angles, built small monument of stones 18 in. high, 22 inches at base, thence east.

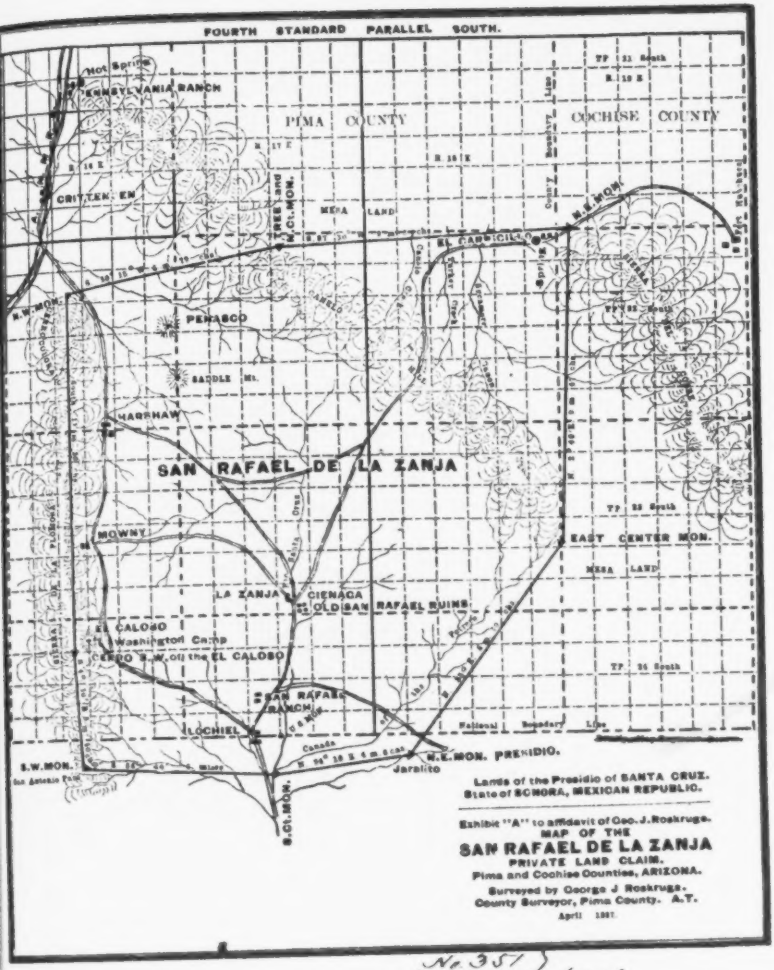
35.50 to road N. & S.

56.00 to Santa Cruz River runs south, 58.70 to top of mesa to old monument. Rebuilt monument—this monument supposed to be the point mentioned as the center from which the east, west, north, and south lines were measured. On this level mesa remains of old town; old streets plainly seen, old metats and pottery in large quantities. From monument Slavin's house bears N. 22½° W., S. 81° W.; Mount Washington bears N. 34½° W. Penasca Mountain; thence

East, var. 12° E. 3½ miles.

3½ miles over rolling mesa with some scattering oaks. Stopped for lunch on top of mesa; time 1 p. m.

(Signed.) G. J. R.



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4 miles on level mesa.

4 miles 70 chains to wash drains SW. enter rolling hills.

5 miles 16 chains 66 links, we discovered monument 2 ft. high, 2 ft. at base. Note.—The measured due E. line terminated south of discovered monument on mesa a distance of ½ mile south of the monument.

From monument on mesa we took bearings to the following peaks: N. 57° 45′ W. to (Red Mountain) Penasca, S. 81½° W. to Mt. Washington; came back to Slaven's ranch and spent the night.

Morning of 22nd at 8.30 a. m. started from center monument—Scott, Roskruge, and self. From center monument we run north, var. 12 E.

4 chains leave mesa and enter bottom land.

709 49 chains to enclosure N. 20° E., S. 20° W.

67.50″ SE. and NW., or more nearly WNW. and ESE.

80 1 mile on bottom land.

29 to Santa Cruz River.

160, 2 miles, S. C. road 2 rods west, NNW.–SSE.

5 chains to road.

10 chains leave bears N. 10° E.

44 chains, river 1 chain east.

47 chains cross river E. & W.

3 miles, on bottom ¼ mile west of mesa, 1 mile east to mesa.

21 chains NNW. & SE. runs SSE.

40 chains, creek 1 chain E. runs south, comes in from east.

4 miles Santa Cruz River 7 chains west.

10 chains wash from NE. drains SW., bends N. to NW., and empties into S. C. River. Santa Cruz River 6 chains west, drains south.

(Signed.) G. J. R.

16 chains, road NW.–SE. and rises on mesa.

60 chains, on edge of mesa, bottom land lays about ¼ mile wide to rolling mesa, 5 miles leave mesa on east, mesa narrow, and bottoms meet ½ mile above.

5 miles 16 chains 66 links, built monument, 2 x 6 at base, 2 feet high, 12 feet west of small washout. Rolling mesa east and west, a few scattering oak trees on mesa east. No trees west. Low rolling mesa west, covered with splendid grass. Reached end of line at 11 a. m. Messrs. Richardson and Scott on horses went up the line in search of arroyo draining towards the "Penasca," Roskruge and Howe examining the small arroyos for over a mile above and ¼ mile below terminus or end of measured line, and to the east of line ¾ of a mile; no trace of tree

710 with X cut on it or monument of stone near any small arroyo draining toward the Penasca. 1.30 p. m. Messrs. Richardson and Scott returned, not having discovered anything like monument beyond an arroyo draining toward the Penasca, Roskruge on east bank of bottom land beyond point of mesa; 1.50 p. m., Mr. Richardson mounted his horse and rode across to where Roskruge is seated, showers to W. and SW.; 2 o'clock p. m., seated near monument and wrote the above memoranda. At 2.15 R. R. Richardson and Roskruge returned. Bearing to old tree, no monument, bears S. 52° E. about ½ mile distant, thence

West, var. 12° E. from which Mt. Washington bears S. 47° W.

38, leave mesa, enter bottom.
44 leave.
48 on mesa.
55 arroyo drains south.
80, 1 mile.
2 miles to top of high mesa, about 2 chains east of two oaks, on edge of mesa.
27 chains, road north & SW.

(Signed.) G. J. R.

23rd, mules lost; Roskruge and Howe chained to 3 miles and 60, where waited for wagon.

3 miles, on east slope of mesa, valley 10 chains east, drains S. rolling land. At 3 miles 60 chains built monument 24 inches high, 24 inches at base, on mesa, from which the following observations were taken:

Top of Penasca bears—
N. 29° W. U. S. mineral monument No. 2, Harshaw district bears
N. 77¼ W. Hermosa house bears
711 S. 70½° W. Mt. Washington bears.
S. 24½° W. Sharp peak in Plomosa Range, Mexico, bears.
S. 9° 50′ W.
S. 10° W.
Foresight. Richardsons Horse bears:
N. 8¾° W. N. 8° 45′ W. 1 mile.

15.80 to small monument of small stones 18 inches high, 18 inches at base east of the Penasca, where R. R. Richardson and Roskruge went to the top of the Penasca Mountain or Hill and took the following observations; time, 10 o'clock a. m.:

To highest peak Plomosa Range	S. 5½° W.
Hermosa House	S. 48¾° W.
U. S. M. M. No. 2	S. 70 ° 20′ W.
Stack Hermosa mill	S. 55¾° W.
Center monument of grant	S. 35½° E.
Highest point Huachuca Mts	S. 74¼° E.
North end	N. 69 ° E.
Monument at 3 miles, 60 chains	S. 30 ° E.
S. center monument at starting point	S. 18½° E.
"Lanoria" (town of) bears	S. 13 ° E.

From small monument at edge of measured line the following observations were taken:

(Signed) G. J. R.

Penasca Mountain bears S. 87¼° W.
Mt. Washington bears S. 20½° W.
Sharp peak in Plomosa range bears S. 9° W.
High peak in Huachuca Mountain bears S. 72° 30′ E.

712 From the small monument west of the Penasca, after taking the above observations we went east within ½ a mile of Roths camp to water and camped for the night, examined the mesa for monument of stones and marked tree, but found none (distance east of the Penasca about 2 miles). In morning of the 24th examined mesa for 1½ miles

east. No trace of monument and marked tree to be found. At 9.30 hitched up team, storm coming on we went to Roth's camp until after the storm. At 1.30, the storm being over, left Roth's camp and started for Slavens. 1 mile from Roth's camp west at left of road (which runs in line for Harshaw camp for 1½ mile from Roth's camp) and 150 yards south on south side of a ravine or valley that drains toward the Penasca discovered a pile of stone (granite 3 ft. high 3½ ft. at base), three large oak trees near but no mark on either of them. The arroyo at 1½ miles bears to southwest, wagon road runs along side on the N. and west and connects with line running west from center.

Camped at Slavins. Scott and Richardson came into camp with an antelope; fat and nice antelope steak and liver for supper, and don't you forgit it.

The following observations taken Monday morning, Oct. 25, from center monument.

(Signed) G. J. R.

Sharp peak Huachuca Mountains	S. 89½° E.
North end of Huachucas	N. 38½° E.
Top of hill (tree on top) small peak back of it	N. 6¾° E.
Penasca Peak	N. 34½° W.
Mt. Washinton bears	S. 81° W.

Flat top peak in Plomosa Range, a hill SW. of Mt. Washington, bears S. 77½° W., supposed to be west center point of grant from the description.

713 High peak south of San Antonio Pass bears S. 40½° W.

San Antonio Pass, small round hill 1st north of San Antonio Pass, bears S. 60½° W.

Check on post, can't take fence in way.

Rocks at south of San Antonio Pass. Monument just north of point of rocks, S. 54° W.

Morning of 25th, Monday. From stake marked S. R. Z., Mt. Washington, bears S. 75½° W.

From south center monument the following observations:

N. 86° 50′ W., course of south boundary, running west, N. 79½° W. ?

N. 78½°, hill at north side of the pass.

High peak back of Mt. Washington N. 58¼° W.

Mt. Washington bears N. 55¼° W.

High peak in Plomoso S. 72° W.

Penasca bears N. 17° 40′ W.

Smelting mill at La Noria N. 51° W.

Round Hill, north Mo., bears N. 7° E.

North point Huachuca Mountains N. 33° E.

High point in the Huachucas N. 74° E.

Supposed north line N. 9° E.; thence on line west.

3 chains to road.

5 " to wash drains south.

37 chains to Santa Cruz River.

39, 50 road, Santa Cruz, N. and S.

43, 30 , to La Noria, NW.

1 mile.

714 16 chains, road N. 20 W. to La Noria.
26 , road NW. SE.
1¾ miles, enter timber and rolling hills, Hogs Backs drains SE.
2 miles " " " "
2 miles, 36 chains road " " "
(Signed) G. J. R.
3 miles " " " "

50 chains to stump from which the remainder of line was measured or triangulated, very rough; too rough to measure; stopped for lunch, time 2 p. m. After lunch Richardson and Howe, on horseback, went to top of divide and made sketch of monument, monument well preserved, sketch on next page; reached Slavis at 7.30 p. m.; team reached Slavins at 5.30 p. m.

Time, 4 p. m., looking north on top of divide south of San Antonio Pass.

Sketch of monument.

Breakfast at 6.30 a. m. and left word for Elias to report to Mr. Richardson at Harshaw as soon as he discovered monument.

715 At 7.30 a. m. started for Harshaw. Reached Harshaw at 10 a. m. Received letter from Alfred Green, and by express from Alfred Green $30, also letter from B. F. Culver.

In discussing the location and position of Red Mountain, Roskruge and Howe decided that the large mountain bet. the Penasca and Sonoyta Range must be the NW. corner monument referred to in the description given of the land grant San Rafael de San ; and in the p. m. of the 26th went to foot of Red Mountain, examined foothills along the SE. for a monument. Howe and Richardson went to the top of the Red Mountain, Red Mountain highest peak, about on line with the Plomosa Range and on line with the north end of the valley, and on line with the north end monument as described, and also of the north end of the Huachucas. 58.

(Signed) G. J. R.

Filed in the office of the clerk, Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk; , deputy.

716 DEFENDANTS' EXHIBIT 6. Map.

(Here follows map marked page 716.)

717 DEFENDANTS' EXHIBIT 7. Map.

(Here follows map marked page 717.)

718 DEFENDANTS' EXH. 8.

(Here follows map marked page 718.)

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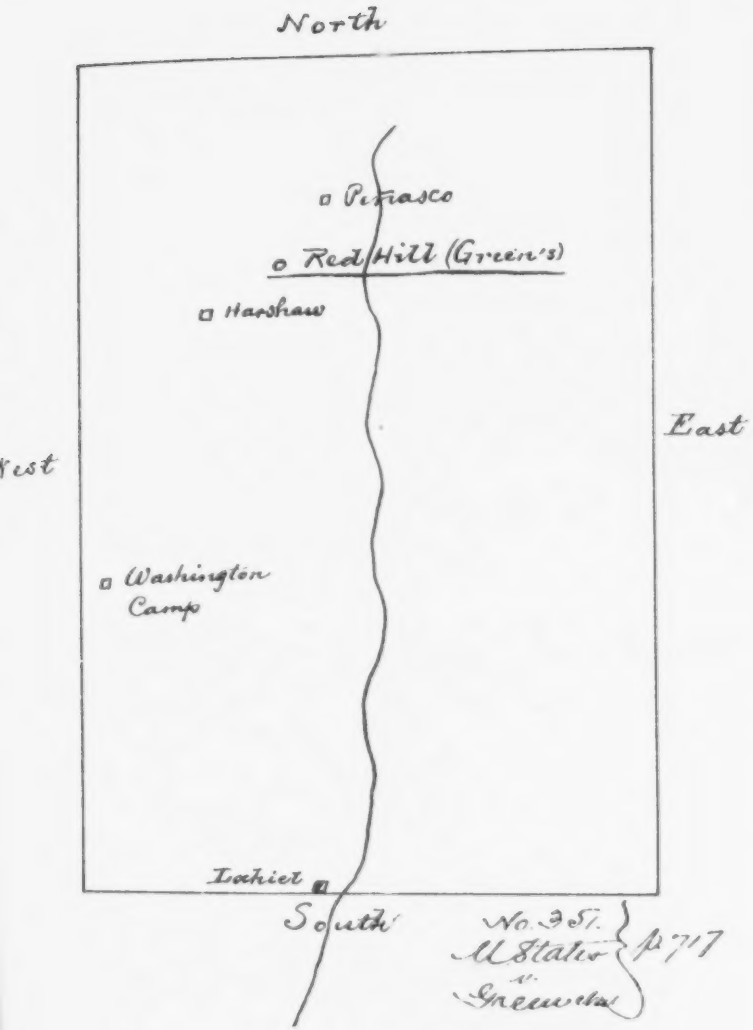

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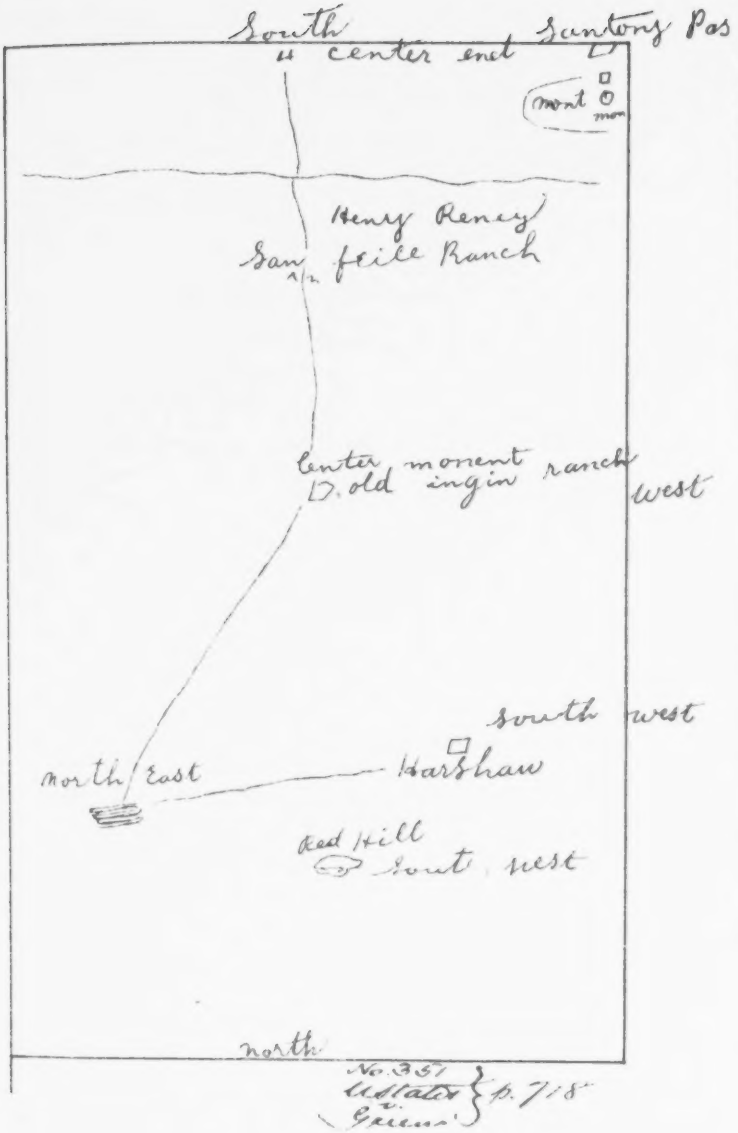
p. 717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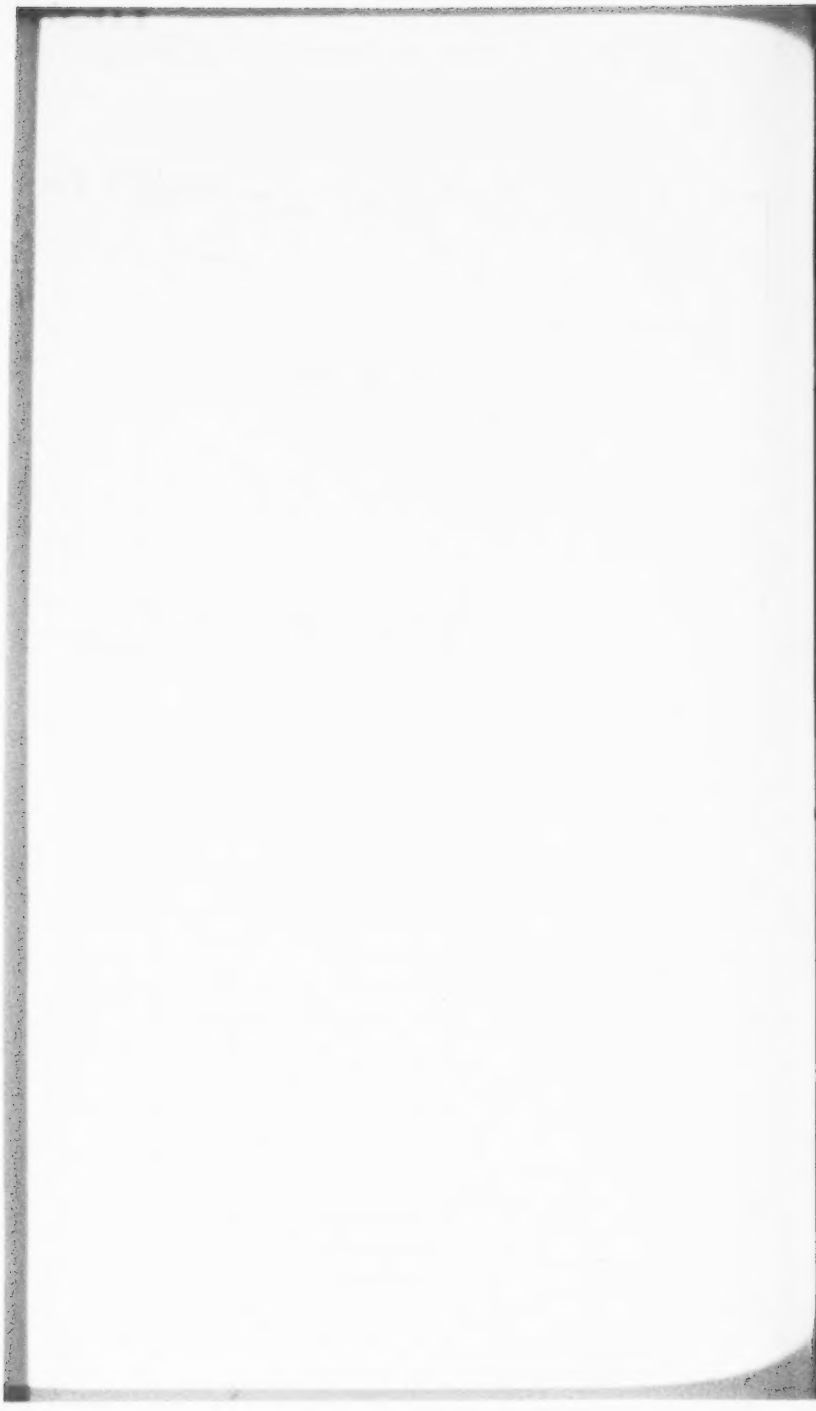


DEFENDANTS' EXHIBIT 9.

General Land Office No. 3884. Mineral certificate No. 26.

The United States of America to all to whom these presents shall come, greeting:

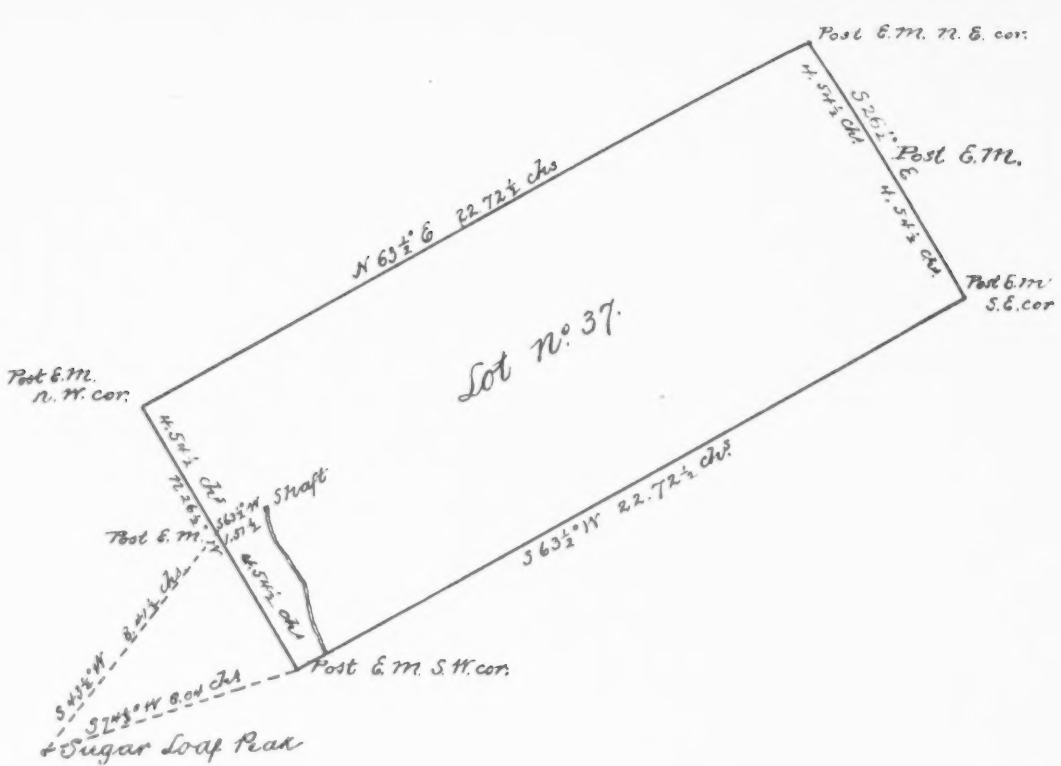
Whereas in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field notes of survey of the claim of Edward N. Fish, Simon Silverberg, and D. A. Bennett, upon the Enterprise Lode, accompanied by the certificate of the register of the land office at Florence, in the Territory of Arizona, whereby it appears that in pursuance of the said Revised Statutes of the United States Edward N. Fish, Simon Silverberg, and D. A. Bennett did, on the thirty-first day of August, A. D. 1876, enter and pay for said mining claim or premises, being mineral entry No. 26, in the series of said office, designated by the surveyor-general as lot No. 37, embracing a portion of the unsurveyed public domain, in the Patagonia mining district, in the County of Pima and Territory of Arizona, in the district of lands, subject to sale at Florence, containing twenty (20) acres and sixty-six hundredths ($\frac{66}{100}$) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows: With magnetic variation at twelve (12) degrees forty-five (45) minutes east, to wit: Beginning at center of the southwesterly boundary of the claim, a juniper stake five (5) inches square in mound of stones, marked "E. M.," from which center of shaft bears north sixty-three (63) degrees thirty (30) minutes east at the distance of one (1) chain and fifty-one and one-half (51½) links a white-oak tree eleven (11) inches in diameter blazed and marked "E. M." bears north seventy-six (76) degrees west at the distance of thirty-four and one-half (34½)

720 links and highest point of Sugar Loaf Peak bears south forty-three (43) degrees thirty (30) minutes west at the distance of eight (8) chains and forty-one and one-half (41½) links. Thence from said center stake, north twenty-six (26) degrees thirty (30) minutes west, four (4) chains and fifty-four and one-half (54½) links to the northwest corner of the claim, a black-oak stake four (4) inches square, in mound of stones marked "E. M." from which a white-oak tree twenty (20) inches in diameter blazed and marked "E. M." bears north sixty-one (61) degrees thirty (30) minutes west at the distance of fifty-five (55) links; thence from said northwest corner north sixty-three (63) degrees thirty (30) minutes west fifteen (15) chains to mouth of small gulch, twenty-two (22) chains and seventy-two and one-half (72½) links to the northeast corner of the claim, a white-oak stake four (4) inches square in mound of stones marked "E. M." from which a white-oak tree twenty (20) inches in diameter, blazed and marked "E. M.," bears north six (6) degrees west at the distance of eighty-two (82) links; thence from said northeast corner south twenty-six (26) degrees thirty (30) minutes east four (4) chains and fifty-four and one-half (54½) links to center of northeasterly boundary of the claim a white-oak stake four (4) inches square, in mound of stones marked "E. M." from which a white-oak twelve (12) inches in diameter blazed and marked "E. M." bears south thirty-one (31) degrees

thirty (30) minutes west at the distance of nine (9) chains and seven and one-half (7½) links, nine (9) chains and nine (9) links to the southeast corner of the claim, a white-oak four (4) inches square in mound of stones marked "E. M.;" thence south sixty-three (63) degrees thirty (30) minutes west, six (6) chains and ten (10) links to bed of dry water course, twelve (12) chains and fifty (50) links to bottom of small canyon, twenty-two (22) chains and seventy-two and one-half (72½) links to the
721 southwest corner of the claim, a white-oak stake four (4) inches square in mound of stones marked "E. M." from which highest point of Sugar Loaf Peak bears south seventy-four (74) degrees thirty (30) minutes west at the distance of eight (8) chains and four (4) links; thence from said southwest corner north twenty-six (26) degrees thirty (30) minutes west, four (4) chains and fifty-four and one-half (54½) links to the place of beginning, containing twenty (20) acres and sixty-six hundredths ($\frac{66}{100}$) of an acre of land, more or less, and embracing fifteen hundred (1500) linear feet of the Enterprise Lode, to wit: one hundred (100) linear feet southwesterly and fourteen hundred (1400) linear feet northeasterly from Discovery shaft on said lode, as represented by yellow shading in the following plat:

Plat
of
the claim of
Edward N. Fish et al.
upon the
Enterprise Lode,
Patagonia mining district, Pima County,
Arizona,
containing 20.66 acres.
Scale 4 chains to an inch.
Variation 12° 45′ E.

723 Now know ye, that the United States of America, in consideration of the premises, and in conformity with the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant unto the said Edward N. Fish, Simon Silverberg, and D. A. Bennett, and to their heirs and assigns, the said mining premises hereinbefore described as lot No. 37, embracing a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of fifteen hundred (1500) linear feet of the said Enterprise vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: Provided, That the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie


Post E.M. N.E. cor:
N. 54½ Chs
S 26½° E
Post E.M.
N. 54½ Chs.
Post E.M.
S.E. cor
N 63½° E 22.72½ Chs
Lot N° 37.
Post E.M.
N.W. cor:
N. 54½ Chs
N 26½° W
Post E.M.
S 63½° W
1.51½
Shaft
N. 54½ Chs
S 63½° W 22.72½ Chs
Post E.M. S.W. cor:
S 45½° W 8.24½ Chs
S 37½° W 8.04 Chs
Sugar Loaf Peak

1858

between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits.

And provided further, That nothing in this conveyance shall authorize the grantees herein, their heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature
724 thereunto belonging unto the said Edward N. Fish, Simon Silverberg, and D. A. Bennett, and to their heirs and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 37, with fifteen hundred (1500) linear feet of the Enterprise vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depths as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress the legislature of Arizona may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be made
725 patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the eighth day of April, in the year of our Lord one thousand eight hundred and eighty, and of the independence of the United States the one hundred*th* and fourth.

By the President:

R. B. HAYES.

[SEAL.] By WM. H. COOK, *Secretary.*

S. W. CLARK,

Recorder of the General Land Office.

Recorded vol. 48, pages 348 to 355, inclusive.

Filed and recorded at request of E. N. Fish, May 13th, A. D. 1880, at 9.50 a. m. S. W. Carpenter, county recorder; by Arthur Borton, deputy.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Charles A. Shibell, county recorder in and for the county of Pima, Territory of Arizona, do hereby certify that the foregoing and annexed is a true and correct copy of the United States patent for the Enterprise mine, situated in Patagonia mining district, Pima County, A. T., dated the 8th day of April, 1880, issued to Edward N. Fish, Simon Silverberg, and D. A. Bennett, as appears now of record in my office, in book No. 9, Deeds of Mines, Pima Co., A. T., on pages 76 et seq.

In witness whereof I have hereunto set my hand and affixed my official seal this 23d day of May, A. D. 1899.

[SEAL.] CHAS. A. SHIBELL,
County Recorder.

Filed May 15, 1899. Jas. H. Reeder, clerk.

726 DEFENDANTS' EXH. 10.

General Land Office, No. 14827. Mineral certificate, No. 408.

The United States of America, to all to whom these presents shall come, greeting:

Whereas in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field notes of survey and the certificate, No. 408, of the register of the land office at Tucson, in the Territory of Arizona, accompanied by other evidence, whereby it appears that Edward N. Fish and Simon Silverberg did, on the fifteenth of November, A. D. 1886, duly enter and pay for that certain mining claim or premises known as the first extension west of the Enterprise lode mining claim, designated by the surveyor-general as lot No. 43, embracing a portion of the unsurveyed public domain in the Patagonia mining district, in the county of Pima and Territory of Arizona, in the district of lands subject to sale at Tucson, and bounded, described, and platted as follows, with magnetic variation twelve degrees and three minutes east: Beginning at the east end center of claim, a post marked 1st Ex. W. E. M. I. M. No. 1 on the west face and E. M. on the east face, in mound of stones, being also initial monument of lot No. 37, the Enterprise mining claim, from which U. S. mineral monument No. III bears south forty-two degrees and thirty minutes west; five hundred and forty-five feet distant; an oak tree fourteen inches in diameter marked 1st Ex. W. E. M. I. M. No. 1 B. T. bears north twenty-three degrees east, one hundred and sixteen feet distant; an oak tree fourteen inches in diameter marked 1st Ex. W. E. M. I. M. No. 1 B. T. bears north fifty-nine degrees and fifteen minutes west, eighty-six feet distant; an oak tree twelve inches in diameter marked 1st Ex. W. E. M. I. M. No. 1 B. T. bears north
727 sixty-four degrees and fifteen minutes west, one hundred feet distant; and an oak tree eight inches in diameter marked 1st Ex. W. E. M. I. M. No. 1 B. T. and E. M. bears north seventy eight degrees west, twenty-three feet distant. Thence, first course, north twenty-six degrees and thirty minutes west, three hundred feet, to a post

marked 1st Ex. W. E. M. No. II on the west face and E. M. on the east face, in mound of stones, being also the northwest corner of said lot No. 37, from which an oak eight inches in diameter marked 1st Ex. W. E. M. No. II B. T. bears north forty-three degrees and fifteen minutes west, forty-four feet distant; an oak tree eighteen inches in diameter marked 1st Ex. W. E. M. No. II B. T. and E. M. bears north sixty-one degrees and thirty minutes west, thirty-eight feet distant; an oak tree twelve inches in diameter marked 1st Ex. W. E. M. No. II B. T. bears south sixty-eight degrees and thirty minutes west, eighty-one feet distant, and an oak tree ten inches in diameter marked 1st Ex. W. E. M. No. II B. T. bears south fifty-two degrees west, seventy-six feet distant. Thence, second course, south forty-five degrees and forty-five minutes west, one thousand five hundred feet, to a post four inches square marked 1st Ex. W. E. M. No. III, in mound of stones, from which an oak tree eighteen inches in diameter marked 1st Ex. W. E. M. No. III B. T. bears north seventy-five degrees and thirty minutes west, one hundred and two feet distant; an oak tree thirty inches in diameter marked 1st Ex. W. E. M. No. III B. T. bears north fifty-two degrees and forty-five minutes west, one hundred and thirteen feet distant; an oak tree thirty inches in diameter marked 1st Ex. W. E. M. No. III B. T. bears north two degrees and thirty minutes east, one hundred and forty-five distant, and an oak tree fifteen inches in diameter marked 1st Ex. W. E. M. No. III B. T. bears south nineteen degrees east, one hundred and forty feet distant. Thence, third course, south twenty-six degrees and thirty minutes east, three hundred feet to west end center of claim, a post four inches square marked 1st Ex. W. E. M. No. 4, in mound of stones, from which
728 an oak tree eighteen inches in diameter marked 1st Ex. W. E. M. No. 4 B. T. bears north seventy-five degrees and thirty minutes east, twenty-two feet distant; an oak tree four inches in diameter marked 1st Ex. W. E. M. No. 4 B. T. bears south sixty-four degrees and thirty minutes east, eighty-eight feet distant; an oak tree eighteen inches in diameter 1st Ex. W. E. M. No. 4 B. T. bears south five degrees west, fifty-six feet distant; an oak tree eight inches in diameter marked 1st Ex. W. E. M. No. 4 B. T. bears south fifty-five degrees west, forty-seven feet distant, and discovery shaft bears north forty-five degrees and forty-five minutes east, one hundred and ten feet distant, four hundred and twenty feet to cut, six hundred feet to a post four inches square marked 1st Ex. W. E. M. No. 5, in mound of stones. Thence, fourth course, north forty-five degrees and forty-five minutes east, one thousand and five hundred feet to a post four inches square marked E. M. on the east face, in mound of stones, being also the southwest corner of said lot No. 37, from which post No. 2 of lot No. 38 B, the western extension Enterprise Mine and mill-site claim, bears south five degrees east, four thousand two hundred and sixty-seven feet distant; an oak tree four inches in diameter marked 1st Ex. W. E. M. No. 6 B. T. bears south thirty-eight degrees and forty-five minutes east, sixty-seven feet distant; an oak tree four inches in diameter marked 1st Ex. W. E. M. No. 6 B. T. bears south twenty degrees east, sixty-one feet distant, and an oak tree four inches in diameter marked 1st Ex. W. E. M. No. 6 B. T. bears south twenty minutes west, thirty-four feet distant.

Thence, fifth course, north twenty-six degrees and thirty minutes west,

three hundred feet to said east end center of claim, the place of beginning; said lot No. 43 extending one thousand five hundred feet in length along said first extension west of the Enterprise vein or lode, and containing nineteen acres and sixty-six hundredths of an acre of land, more or less.

729 Now, know ye that there is, therefore, hereby granted by the United States unto the said Edward N. Fish and Simon Silverberg and to their heirs and assigns the said mining premises hereinbefore described and not expressly excepted from these presents, and all that portion of the said first extension west of the Enterprise vein, lode, or ledge, and of all other veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 43, extended downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises; provided, that the right of possession to such outside parts of said veins, lodes, or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 43, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes, or ledges; and provided further, that nothing herein contained shall authorize the grantees herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said grantees above named and to their heirs and assigns forever; subject, nevertheless, to the above-mentioned and to the following conditions and stipulations: First, that the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode, or ledge the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode, or ledge.

730 Second, that the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Third, that in the absence of necessary legislation by Congress the legislature of Arizona may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof I, Benjamin Harrison, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and thirteenth.

By the President,

[SEAL.] BENJAMIN HARRISON,

By M. MCKEAN, *Secretary.*

Examined. Recorded, vol. 167, pages 351 to 355, inclusive. Robt. W. Ross, Recorder of the General Land Office.

Filed and recorded at request of Edward N. Fish, April 25th, A. D. 1889, at 10.15 a. m. Charles A. Shibell, county recorder.

731 TERRITORY OF ARIZONA,
County of Pima, ss:

I, Charles A. Shibell, county recorder, in and for the county of Pima, Territory of Arizona, do hereby certify that the foregoing and annexed is a true and correct copy of the United States patent for the first extension west of the Enterprise vein, situated in Patagonia mining district, Pima County, A. T., dated the thirteenth day of April, A. D. 1889, issued to Edward N. Fish and Simon Silverberg, as appears now of record in my office in Book No. 19, Deeds of Mines, Pima County, A. T., on pages 375 et seq.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-third day of May, A. D. 1899.

[SEAL.] CHAS. A. SHIBELL,
County Recorder.

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk, by , deputy.

732 DEFENDANTS' EXHIBIT 11.

General Land Office, No. 14828. Mineral certificate No. 409.

The United States of America to all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field notes of survey and the certificate, No. 409, of the register of the land office at Tucson, in the Territory of Arizona, accompanied by other evidence, whereby it appears that Edward N. Fish and Simon Silverberg did, on the fifteenth day of November, A. D. 1886, duly enter and pay for that certain mining claim or premises, known as the Eastern Extension Enterprise lode mining claim, designated by the surveyor-general as lot No. 44, embracing a portion of the unsurveyed public domain in the Patagonia mining district, in the county of Pima, and Territory of Arizona, in the district of lands subject to sale at Tucson, and bounded, described, and platted as follows, with magnetic variation twelve degrees and three minutes east: Beginning at the west end center of claim, a post four inches square, marked E. M., and on its easterly face E. Ex. E. M. I. M. No. 1, in mound of stones, being also the east end center of lot No. 37, the Enterprise mining claim, from which U. S. mineral monument No. 3 bears south fifty-eight degrees and five minutes west two thousand and fifteen feet distant; discovery shaft bears north seventy-eight degrees and fifteen minutes east thirty-one feet distant; an oak tree twelve inches in diameter, marked E. Ex. E. M. I. M. No. 1, B. T. and E. M., bears south nine degrees and fifteen minutes east forty-six feet distant; an

oak tree eight inches in diameter, marked E. Ex. E. M. I. M. No. 1, B. T. and E. M., bears south thirty degrees west sixty-four feet distant; an oak tree ten inches in diameter, marked E. Ex. E. M. I. M. No. 1,
733 B. T. bears north thirty-one degrees and fifteen minutes west sixty-nine feet distant, and an oak tree four inches in diameter, marked E. Ex. E. M. I. M. No. 1, B. T., bears north ten degrees and forty-five minutes west, fifty-two feet distant. Thence, first course, south twenty-six degrees and thirty minutes east three hundred feet to a post four inches square, marked E. M., and on its easterly face E. Ex. E. M. No. 11 in mound of stones, being also the southeast corner of said lot No. 37 from which an oak tree five inches in diameter, marked E. Ex. E. M. No. 11, B. T., bears north fifty minutes west fifty-five feet distant; an oak tree four inches in diameter, marked E. Ex. E. M. No. 11, B. T., bears south fourteen degrees east seventy-five feet distant; an oak tree six inches in diameter, marked E. Ex. E. M. No. 11, B. T., bears south forty degrees east one hundred and seven feet distant, and an oak tree twelve inches in diameter, marked E. Ex. E. M. No. 11, B. T., bears north thirty minutes east sixty-nine feet distant. Thence, second course, north seventy-eight degrees and fifteen minutes east one thousand three hundred and seventy-five feet to a post four inches square, marked E. Ex. E. M. No. III in mound of stones, from which an oak tree eight inches in diameter, marked E. Ex. E. M. No. III, B. T., bears north eight degrees east forty-six feet distant; an oak tree six inches in diameter, marked E. Ex. E. M. No. III, B. T., bears north eighty degrees and thirty minutes east forty-three feet distant; an oak tree four inches in diameter, marked E. Ex. E. M. No. III, B. T., bears south forty-nine feet distant, and an oak tree six inches in diameter, marked E. Ex. E. M. No. III, B. T., bears north seventy-seven degrees east eighty feet distant. Thence, third course, north twenty-six degrees and thirty minutes west three hundred feet to the east end center of claim, a post four inches square, marked E. Ex. E. M. No. IV in mound of stones, being also the initial monument of the "Alice" Mining Claim, from which an oak tree eight inches in
734 diameter, marked E. Ex. E. M. No. IV, B. T., bears north forty-five degrees west twenty-five feet distant; an oak tree eighteen inches in diameter, marked E. Ex. E. M. No. IV, B. T., bears south thirty-eight degrees and forty-five minutes west forty feet distant; an oak tree ten inches in diameter, marked E. Ex. E. M. No. IV, B. T., bears south fifteen degrees east fifteen feet distant, and an oak tree eight inches in diameter, marked E. Ex. E. M. No. IV, B. T., bears north seventy-five degrees and thirty minutes east twenty-seven feet distant, six hundred feet to a post four inches square, marked E. Ex. E. M. No. V in mound of stones, from which an oak tree six inches in diameter, marked E. Ex. E. M. No. V, B. T., bears north forty minutes east sixty-seven feet distant; an oak tree fourteen inches in diameter, marked E. Ex. E. M. No. V, B. T., bears north seventy-two degrees and thirty minutes east seventy-two feet distant; an oak tree eight inches in diameter, marked E. Ex. E. M. No. V, B. T., bears south sixty-seven degrees east sixty feet distant, and an oak tree twelve inches in diameter, marked E. Ex. E. M. No. V, B. T., bears south thirty-five degrees east sixty-one feet distant. Thence, fourth course, south seventy-eight degrees and fifteen minutes west one thousand three hundred and seventy-five feet to a post four inches square, marked E. M., and on its

easterly face, E. Ex. E. M. No. VI in mound of stones, being also the northeast corner of said lot No. 37, from which an oak tree eight inches in diameter, marked E. Ex. E. M. No. VI, B. T., bears south five degrees west sixty-six feet distant; an oak tree eight inches in diameter, marked E. Ex. E. M. No. VI, B. T., bears north eighty-one degrees west fifty feet distant; an oak tree twelve inches in diameter, marked E. Ex. E. M. No. VI, B. T. and E. M., bears north six degrees west fifty-three feet distant, and an oak tree four inches in diameter, marked E. Ex. E. M. No. VI, B. T., bears south eighty-five degrees east fifty feet distant. Thence, fifth course, south twenty-six degrees and thirty minutes east three hundred feet to said west end center of claim, the place of
735 beginning; said lot No. 44 extending one thousand three hundred and seventy-five feet in length along said Eastern Extension Enterprise vein or lode, and containing eighteen acres and thirty-hundredths of an acre of land, more or less.

Now, know ye, that there is therefore hereby granted by the United States unto the said Edward N. Fish and Simon Silverberg, and to their heirs and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Eastern Extension Enterprise vein, lode, or ledge, and all other veins, lodes, and ledges throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 44, extended downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises: Provided, That the right of possession to such outside parts of said veins, lodes, or ledges shall be confined to such portion thereof as lie between vertical planes drawn downward through the end lines of said lot No. 44, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes, or ledges: And provided further, That nothing herein contained shall authorize the grantees herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantees above named, and to their heirs and assigns forever; subject, nevertheless, to the above mentioned and to the following conditions and stipulations: First: That the premises hereby granted with the exception of the surface may be entered by the
736 proprietor of any other vein, lode, or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode, or ledge. Second: That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts. Third: That in the absence of necessary legislation by Congress, the legislature of Arizona may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Benjamin Harrison, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, and of the independence of the United States the one hundredth and thirteenth.

By the President: BENJAMIN HARRISON.
[SEAL.] By M. McKEAN, *Secretary.*

Examined. Recorded vol. 167, pages 356 to 360, inclusive. Robt. W. Ross, recorder of the General Land Office.

Filed and recorded at request of Edward N. Fish, April 25th, A. D. 1889, at 10.15 a. m. Charles A. Shibell, county recorder.

737 TERRITORY OF ARIZONA,
County of Pima, ss:

I, Charles A. Shibell, county recorder in and for the county of Pima, Territory of Arizona, do hereby certify that the foregoing and annexed is a true and correct copy of the United States patent for the Eastern Extension Enterprise lode, situated in Patagonia mining district, Pima County, A. T., dated the thirteenth day of April, A. D. 1889, issued to Edward N. Fish and Simon Silverberg, as appears now of record in my office, in Book No. 19, Deeds of Mines, Pima County, A. T., on pages 379 et seq.

In witness whereof I have hereunto set my hand and affixed my official seal this 23d day of May, A. D. 1899.

[SEAL.] (Signed) CHAS. A. SHIBELL,
County Recorder.

Filed in the office of the clerk Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk, deputy.

738 DEFENDANTS' EXHIBIT 12.

SANTA CRUZ, *febrero 28 de 1884.*

Jesus Romero.

Por el presente conste que hago formal traspaso de venta al C^no. Marcos Nabarrete del que tengo en el rancho de San Rafael de la Sanja, por la cantidad de cien pesos, plata mexicana. Dicho derecho es adquirido por mi finado padre Jose Romero de este pueblo. Ygualmente tengo el derecho de mi esposa, Florencia Medina, del mismo pueblo. Por tal razon el Sr. Nabarrete queda en derecho de hacer los usos que le convengan con mis dichos derechos y para su seguridad le estendi el presente en S^ta Cruz á 28 de feb^o. de 1884.

JESUS ROMERO.

T.:
JOSE FEDERICO.
T.:
LUIS SALGADO.

(On the margin:) For value rec'd I hereby sell, assign, transfer, and convey to V. H. Igo, all my right, title, and interest in and to the property conveyed to me in the within instrument, situate in Arizona, this March 3rd, 1884.

Attest: Mr. NABARRETE. [SEAL.]

Filed and recorded at request of V. H. Igo, March 3rd, A. D. 1884, at 3.15 p. m. A. T. Jones, county recorder.

739 SANTA CRUZ, *febrero 29 de 1884.*

Luis Billa.

Trespaso la parte que tengo en San Rafael de la Sanja al Cº. Marcos Nabarrete por un caballo, con el compromiso, que ha de pagar los derechos de el y al mismo tiempo obligandose á que si vende dicho derecho me pagara una tercera parte y si no vende al mismo tiempo, no hay derecho de que me reclame nada de lo que me dió por dicho derecho. Derecho para su seguridad estendido en el presente mes, 29 de febrero, en el pueblo de Santa Cruz.

LUIS BILLA X.

T.:
PEDRO TAVERA.
T.:
LUIS SAEGADO.

(On the margin:) For value rec'd I hereby transfer, sell, assign, and convey to V. H. Igo all my right, title, interest, and claim in and to the property described in the within instrument situate in Arizona. Witness my hand and seal this March 3rd, 1884.

Attest: Mr. NABARRETE. [SEAL.]

Filed and recorded at request of V. H. Igo, March 3rd, A. D. 1884, at 3.15 p. m. A. T. Jones, county recorder.

740 SANTA CRUZ, *febrero 29 de 1884.*

Jesus Romero.

Por el presente conste que hago formal trespaso de venta al Cº. Marcos Nabarrete del derecho que tengo en el rancho de San Rafael de la Zanja, por la cantidad de cien pesos, que he recibido á mi entera satisfaccion. Dicho derecho es adquirido por mi finada madre Mauricia Garcia de este pueblo. Por tal razon el Sr. Nabarrete queda en derecho de hacer los usos que le convengan con mi dicho derecho.

Y para su seguridad le estendí el presente en Sta. Cruz á 29 de febrero de mil ochocientos ochenta y cuatro.

A ruego de José Vega.

JESUS ROMERO.

For value rec'd I hereby sell, transfer, or sign and convey to V. H. Igo all my right, title, and interest, and claim in and to the property described in the within instrument situated in Arizona.

Witness my hand and seal this March 3rd, 1884.

Attest: Mr. NABARRETE. [SEAL.]

T.:

ANGEL LOPEZ.

T.:

JOSE FEDERICO.

Filed and recorded at request of V. H. Igo, March 3rd, A. D. 1884 at 3.15 p.m. A. T. Jones, county recorder.

741 COUNTY RECORDER'S OFFICE,
Cochise County, Arizona:

I, Frank Hare, county recorder in and for the county of Cochise, Territory of Arizona, do hereby certify that the annexed instruments of writing, to wit: A bill of sale or deed of transfer from Jesus Romero to V. H. Igo, through Marcos Nabarrete; a bill of sale or deed of transfer from Luis Billa to Marcos Nabarrete, and transferred on the margin by Marcos Nabarrete to V. H. Igo; a bill of sale or deed of transfer from Jose Vega to Marcos Nabarrete, and by Marcos Nabarrete to V. H. Igo, are true and correct copies of records now in my office.

Given under my hand and seal of office, this 4th day of May, A. D. 1899.

[SEAL.] FRANK HARE,
County Recorder.

(A ten cent revenue stamp.)

Filed in the office of the clerk, Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk. By deputy.

742 DEFENDANTS' EXHIBIT 13.

This indenture, made the 3rd day of March, in the year of our Lord one thousand eight hundred and eighty-four, between Antonio Romero, party of the first part, of Santa Cruz, Sonora, Mexico, and Marcos Nabarrete, of Cochise County, Arizona, party of the second part, witnesseth: That the said party of the first part, for and in consideration of one hundred dollars currency of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents demise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns forever, to wit:

All and singular, all my right, title, and interest, and claim in and to the Rancho da San Rafael de la Sanja, situated in Cochise and Pima Counties, Arizona, and in the State of Sonora, Republic of Mexico, it being all my right in and to said grant, inherited by me through and from my father, Jose Romero, and through and from my mother, Jesus Leiva.

Together with all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits

thereof. To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set his hand and seal, the day and year first above written.

[SEAL.] his ANTONIO x ROMERO. mark.

Signed, sealed, and delivered in the presence of—
JONES BOWEN,
THOS. J. DOWELL.

743 TERRITORY OF ARIZONA,
County of Cochise, ss:

On this 3rd day of March, 1884, personally appeared before me, Jones Bowen, a notary public in and for said county, Antonio Romero, satisfactorily proved to me to be the person described in and who executed the within conveyance by the oath of Marcos Nabarete, a competent and creditable witness for that purpose, by me duly sworn, and he, the said Antonio Romero, acknowledged that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal this 3rd day of March, 1884.

[SEAL.] JONES BOWEN,
Notary Public, Cochise Co., A. T.

Filed and recorded at request of V. H. Igo, March 3rd, 1884, at 3–15 p. m. A. T. Jones, county recorder.

Book 6, pp. 320, Deeds of Real Estate.

744 This indenture, made the 3rd day of March, in the year of our Lord one thousand eight hundred and eighty-four, between Marcos Navarete, of Cochise County, Arizona, party of the first part, and V. H. Igo, of same place, party of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of five hundred dollars, currency of the United States of America, to him in hand paid by the said party of the second part, the whereof is hereby acknowledged, does by these presents demise, release, and forever quit claim unto the said party of the second part and to his heirs and assigns forever of all and singular my entire interest in and to the Ranch de San Rafael de la Sanja, situated in Cochise and Pima counties, Arizona Territory, including all the interest purchased by me from Jesus Romero, Luis Billa Aruego de Jose Viga, by transfer bearing date February 29th, 1884, to all of which transfers reference is hereby made and which are made parts hereof, also all the interest purchased by me from Antonio Romero by transfer of even date herewith, which said transfer is part hereof. This being intended to convey all the interest mentioned in said transfer above mentioned, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. To have and to hold all and singular the said premises together

with the appurtenances unto said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and the day and year first above written.

Mr. NAVARETE. [SEAL.]

745 TERRITORY OF ARIZONA,
County of Cochise, ss:

On this 3rd day of March, 1884, personally appeared before me, Jones Bowen, a notary public in and for said county, M. Navarete, satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of Thos. J. Dowell, a competent and creditable witness for the purpose by me duly sworn; and he, the said M. Navarete, acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal this 3rd day of March, 1884.

[SEAL.] JONES BOWEN,
Notary Public, Cochise Co., A. T.

Filed and recorded at request of V. H. Igo, March 3rd, 1884, at 3.15 p. m. A. T. Jones, county recorder.

Book 6, pp. 332, Deeds of Real Estate.

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk; by ————, deputy.

746 TERRITORY OF ARIZONA,
County of Cochise, ss:

I, Frank Hare, county recorder in and for said county and Territory, do hereby certify that the annexed instruments of writing, to wit:

A deed or transfer from Antonio Romero to Marcos Nabarete, made the 3rd day of March, 1884, Book 6, pp. 320, Cochise County Records, and deed or transfer from Marcos Navarete to V. H. Igo, made the 3rd day of March, 1884, Book 6, pp. 322, Cochise County Records, are true and correct copies from the records of my office.

Witness my hand and official seal this 4th day of May, A. D. 1899.

[SEAL.] FRANK HARE,
County Recorder.

(Ten-cent revenue stamp.)

747 DEFENDANT'S EXH. 14.

This indenture made and entered into this 11th day of January, A. D. 1883, between Juan Salgado, of the county of Magdelene, State of Sonora, Republick of Mexico, party of the first part, and Mrs. Catherine Sheehy, party of the second part, of Cochise County, Arizona Territory, United States of America, witnesseth: That the party of the first part, for and in consideration of the sum of $30 *dollars* in gold coin of the United States to him this day in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have this day released, sold, remised, and quit claim, and by these presents does remise, release, and quit claim unto Catherine Sheehy, or the party of the second part, and to her heirs and assigns forever, three (3) parts with all *there* rights, titles, claims,

possessions, and interests in the Spanish grant of land and within the boundary lines of the San Rafael de la Sanja. I am Juan Salgado, the lawful son of Thaddeis Salgado & Jatruda Asseda, they both being neighbors with Ramoon Romero and neighbors to whom the Spanish grant above men, was first made and given to. I now, Juan Salgado, a native of Santa Cruze, the only heir now living belonging to my father and my mother, the three of us being *jenuine* heirs of the Spanish grant of land made and given to Ramoon Romero and the neighbors of Santa Cruze State of Sonora, Mexico (I hereby command and control 3 parts, that of my father's and my mother's and that of my owne), conveying these 3 parts, with all my rights, titles, claims, possessions, and interests within the boundary lines of the Spanish grant of land known as San Rafael de la Sanja, to Catherine Sheehy, or the party of the second part, and to her heirs and assigns forever, the Spanish grant of land San Rafael de la Sanja, situated and being in Pima County and partly in Cochise County, the center being in the middle of the San Rafael Valley, where the county
748 line is supposed to run north and south through the San Rafael Valley, Arizona Territory, United States of America, particularly boundary lines, and described as follows, to wit: Commencing at a point in San Antonia Pass, where there is a monument of stone, and running northerly on the west side by the Patagonia Mts., a place called Campo Serno, where there is another monument, and connecting with the northerly boundary line, then to the northwest of the end of the Huachuca Mts., and the Canala Mountains laying on the north side, the northeast corner being at northwest end of Huachuca Mts., and then southerly to the north end of the Carracietys Mts., and south from the Jarelito, cornering on the Terrenorte Ranch or Huachuca Mts. on the east side, the north end of the Carracietys Mts. being the southeast corner, then westerly across the Portraro canayon, contenuing westward across the San Rafael valley to San Antonia Pass, where the first monument of stone is, or the place of beginning, the lands of the Santa Cruze town being Mexico on the south side, and connecting to the Spanish grant San Rafael de la Sanja; to have and to hold to her, Catherine Sheehy, said party of second part, and to her heirs and to her assigns forever the above-mentioned 3 parts, all my rights, titles, claims, and interests which I have here before been lawfully heir and entitled to in the above-described Spanish grant of land San Rafael de la Sanja.

In witness whereof the said party of the first part has hereunto *s*et his hand and seal the day and year first above witness.

(Signed) his JUAN x SALGADO. mark

Witness:

T. TATELLO.

his
LUCAS x MARTINEZ.
mark

R. HARRISON.

749 TERRITORY OF ARIZONA,
County of Pima, ss.

On this 11th day of January, 1883, before me, R. Harrison, a justice of the peace in and for the county of Pima, personally appeared Juan

Salgado, known to me to be the person whose name is subscribed to the within instrument, and who acknowledged to me that he executed the same.

R. HARRISON, *J. P.*

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk; by , deputy.

750 DEFENDANTS' EXHIBIT 15.

RANCH SAN RAFAEL DE LA ZANJA.

The above ranch contains about 140,000 acres; all of it with the exception of about 4,000 acres is situated in Pima County, southern Arizona. The smaller quantity is on the Mexican side of the "boundary line" in the district of Magdalena, State of Sonora.

TITLE OR GRANT.

In the year 1821 just before the treaty of Cordova which separated Mexico from Spain, the above tract of land had been denounced, measured, and surveyed in favor of Manuel Bonilla who had petitioned the intendiente of the King of Spain for four leagues (sitios) of land embraced in the place or tract called San Rafael de la Zanja. After the measurement had been made and the value or price to be paid had been assessed according to the custom and laws of Spain, the usual publication was made to the people, to ascertain if any person had objection to make why the land denounced by Manuel Bonilla called San Rafael de la Zanja, should not be sold or granted to the said Bonilla; and, if so, to appear and set them forth. Then appeared Ramon Romero on behalf of himself and some residents of the pueblo de Santa Cruz, stating that the price fixed was small for so large a tract of land. The intendiente, after receiving the objections of Romero, referred all the papers to the
751 attorney-general of the province for his opinion; the attorney-general sustained the objections offered by Romero and reported that according to law the matter must be determined by the "Junta Real," the royal tribunal. Right here it must be well understood what were the powers and duties of this tribunal; for if they had the power to settle upon the boundaries of this grant and how it should be sold or granted; and if the tract of land then in dispute was ordered by them to be sold according to the survey made in favor of Bonilla, with the land marks and monuments fixed and determined, and such sale was made in pursuance thereof and the price paid by the purchaser, then all matters of ownership and boundaries of the specified tract of land called San Rafael de la Zanja was finally settled forever in relation to the sovereignty and the individual ownership of the land. I say, finally, because the decision of the royal tribunal, if no appeal was taken and none was ever taken, became final. Hence, all questions that have subsequently been raised before the late U. S. surveyor-general of Arizona relating to boundaries by illegal parties are totally void and of no legal effect whatever.

To resume the history of the grant, the royal tribunal, after hearing the report of the atty.-general, ordered a proclamation to be published at the puebla of Santa Cruz (the lands of San Rafael bound upon the lands of Santa Cruz on the south), also at Arizpe, the capital of the province, inviting any and all parties interested in the sale of the
752 tract of land called San Rafael de la Zanja to come and bid; that the said tract of land would be sold at public auction to the highest bidder at Arizpe, the capital of the province, on three consecutive Sundays, at 12 o'c., the dates being given.

The sale took place and the tract of land called San Rafel de la Zanja, according to the measurements, landmarks, and boundaries, was bought by Ramon Romero for himself and some interested residents of the town of Santa Cruz. The money was paid by Romero; the deed or grant executed by the intendiente to Ramon Romero for himself and vicines interesado de Santa Cruz. Who were these vecinos does not now appear, as Romero's name alone appears in the record. The Romero family say they were a few old veterans of the Spanish army with whom Romero, their father, settled, and the others returned to Spain at the close of the war of Mexican independence.

Romero and his family took possession of their land, and continued in possession with much difficulty and interruption on account of the terrible invasions and atrocities of the Apache Indians, who after the independence of Mexico increased in power to such an extent that all the pueblas or towns and ranches in what is now called the Territory of Arizona and the northern part of Sonora were completely destroyed with but one exception, namely, the town of Santa Cruz, which in 1849 was reduced to a population of eight men and one yoke of cattle, consisting of one ox and one cow. At that time they were and had been cut
753 off for several years from all help and succor. Five men stood guard over the poor ill-assorted team while the three men cultivated a small patch of land enclosed with an adobe wall. They lived partly upon roots; their fuel was the rafters and doors from the now vacant and desolate houses of their slaughtered families. In this destitute condition they were found by a large body of gold seekers on their way from Texas in 1849.

Romero and wife and family joined the Texans and fled to California. There the old folks died. After the acquisition of Arizona by the United States two of the sons of Romero, Francisco and Pedro, returned and built houses and put a few head of cattle upon the ranch; but alas, the Apaches they found as bad, if not worse, than ever, for formerly they had only bows and arrows, now they had the deadly rifle and polished blades of steel. These sons of Romero found no protection under the U. S. for their homes or their property. They first sought refuge at Fort Buchanan, the nearest military station. Then finding it impossible to continue their occupation they retired into Mexico, where the writer found them in January, 1880, cultivating a small patch of land in the vicinity of Magdalena, State of Sonora. The writer succeeded in buying out their shares in the ranch and learned from them that all the remaining heirs were living in Los Angeles and San Bernardino counties, State of California.

The writer then proceeded to California and made a complete purchase of all the interest of the rest of the family, then returned
754 to Tucson, the county seat of Pima Co., and had recorded all the deeds, the record showing there was no deed, contract, mortgage, or any writing of any kind on record prior to the deeds he had received from the heirs of the original grantee, Ramon Romero.

After making the purchase of the ranch and a careful examination of the boundaries and knowing that a small portion of the ranch was inside of Mexico, the writer proceeded to Magdalena, the county seat of the district, and had the deeds recorded there, having previously obtained from the Mexican consul in Tucson, A. T., the necessary certificate for recording in Mexico.

After the deeds were recorded application was made to the proper Mexican authorities for the survey and confirmation of his purchase for that part of the grant which is in Mexico. After the survey had been made, deeds filed in court, testimony was taken to prove that the parties who sold were the legal heirs. After all this was done that part of the ranch San Rafael de la Zanja was confirmed by the tribunals of Mexico to Alfred A. Green, the grantee of the heirs of Ramon Romero.

While the said Green was at work seeking out and purchasing the rights of the legal owners of the land two rather unprincipled lawyers, one Mexican, educated in California, the other an American, finding that in the grant to Romero mention was made of the words "vecinos of Santa Cruz," went to that Mexican town, called a mass meeting of the people, and told these simple-minded people that whereas the San
755 Rafael grant recited that the land was granted to Ramon Romero and some vecinos, residents of Santa Cruz, therefore all the inhabitants of said town had an interest or common ownership with Romero; and furthermore told these innocent people that if they would sign a contract deeding one-third of the land to them the said Lindly and Corilla, that the latter would make application to the U. S. surveyor-general of Arizona to have the said ranch surveyed and confirmed to all who would sign and contribute money to carry out the scheme. Nearly all the adult male population of Santa Cruz signed the contract with Lindly and Corilla, and these latter, to give show of color to their illegal proceedings, used fraudulently and without authority the names of the heirs of Romero in their petition to the surveyor-general of Arizona. The latter, acting under and corrupted by the said attorneys above-mentioned, did confirm the grant to the extent of four square leagues alone; nevertheless he did confirm it to the heirs of Ramon Romero and vecinos de Santa Cruz. The reason why this was done was because, first, Hopkins, the U. S. translator, made a false translation of certain phrases in the grant, to wit, the words "cuatro sitios" he translated four square leagues, interpolating the word "square," thus changing the whole sense, which, if adopted would lessen materially the quantity of the land and value of the grant.

2nd. The surveyor-general's secretary was interested in a rich mine, the Hermosa Mine, and by adopting the four square league sur-
756 vey it would leave this rich mine outside of the grant and many other mines likewise.

When the writer heard that Lindly and Corilla had made a peti-

tion for conformation he employed as counsel to advise and attend to his affairs before the U. S. surveyor-general G. W. Spaulding. The latter advised him to pay no attention to the petition of the said Lindly and Corilla, as they were proceeding without the sanction or authority of the owners of the grant. Nevertheless the writer, because his counsel was sick or pretended to be, did go before the sur. gen., Wasson, and asked him to grant sufficient time to show the fraud perpetrated by the said Lindly and Corilla, but the said U. S. Surveyor-General Wasson coolly informed him that he had already drafted the outlines of a decision which he would render in the case, and read it, wherein he confirmed the grant to the extent of four square leagues. The writer then asked for time to put in evidence and to show who were the legal owners of the grant. This the said Wasson refused, and when asked his reason for such indecent haste he got very much excited and said the Department at Washington was forcing him to hurry up with his decisions on Arizona grants. In vain the writer protested that it was of the greatest importance to get in all the facts and establish the truth; otherwise great confusion would arise, for all the squatters and miners round about would take it for granted that all the land outside of the four square leagues was public land and rush into the possession thereof. To my
757 surprise, Wasson, the sur. gen., would not allow me any time whatever to put in evidence or testimony, and the inevitable result of this wilfully stupid and corrupt doing was the cause of many squatters and unprincipled miners squatting on the property.

Again I consulted with my counsel, who advised me to keep quiet and that he would make an affidavit and send it to the Hon. Sec. of the Interior, Carl Schurz. And another reason he urged was that the sur. gen. had no judicial power and that his decision upon such matters was of no legal effect whatever.

The sur. gen. forwarded the case to the Sec. of the Interior. My attorney, G. W. Spaulding, filed a brief. Since that time nothing further has been done with this attempt to swindle, except that it was sent to Congress where it has been stowed away for several years; but in the meantime squatters and miners have virtually held their sway over part of the ranch on account of the illegal survey.

In 1880 the undersigned, being full and sole owner of the ranch, contracted with one R. R. Richardson to sell him nine-tenths of the ranch for two hundred thousand dollars and his special services. A small percentage of this price was paid to bind the contract; the greater part, about one hundred and ninety thousand dollars, to be paid in instalments when the title or grant was confirmed by Congress or the tribunals of the country.

Richardson was to act as agent for the owner, pay all taxes upon the whole tract until he obtained his deed; but there is nothing in
758 said contract which allows or permits the said Richardson to enter upon or take possession of any part of the ranch in his name until he paid the price, performed his part of the contract, and obtained his deed.

The subsequent history of this litigation over this land grant is not conceived to be within the province of the honorable Land Court to consider. The parties now in forcible and wrongful possession, known as

the Cameron party, have no conveyance from said Alfred A. Green, representing the Romero title, who claims to be the only person competent to sue for confirmation, and who held possession until ejected without process of law by said Cameron party, claiming only at first under the Richardson contract, and said Alfred A. Green still represents an interest on behalf of his recognized assigns. It is supposed by said Alfred A. Green that the honorable Land Court will pass only upon the proper survey of said grant and decree the legal title to be in the heirs of Ramon Romero and their legal representatives, and also whether the said title is exclusively in his heirs and legal representatives, all other claims of parcioneros void for uncertainty.

However, it is deemed improper to follow this history any further or to set forth the attempts of the said Cameron party to wrest this property from said Alfred A. Green and also to wrest from the United States more than the proper boundaries of said land grant, said Alfred A. Green asking only that the land embraced within the monuments of the survey made by the comandante, all of which was offered at public auc-
759 tion and purchased by the said Romero, which claim is also sanctioned by the Department of the Interior, as will be seen by report of the Land Commissioner filed in this case.

The honorable Land Court will also recognize the importance of settling the above questions, as well for the public concern as for the concern of all parties interested in said grant.

Respectfully submitted.

San Francisco, March 26th, 1895.

(Signed) ALFRED A. GREEN.

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk, by , deputy.

760 DEFENDANT'S EXHIBIT 16.

I, Victor Aguilar, treasurer-general of the State of Sonora, Republic of Mexico, certify that the manual book of charges and entries corresponding to the year 1822 does not exist.

And at the request of the Commissioner of the American Government, Mr. H. O. Flipper, I give the present certificate in the city of Hermosillo on the twelfth day of the month of March, eighteen hundred and ninety-four.

V. AGUILAR. [RUBRIC.]

761 Victor Aguilar, tesorero general del Estado de Sonora, República de México, certifico que al libro manual de cargo y data correspondiente al año de 1822 no existe.

Y á pedimento del comisionado del Gobierno americano Sr. H. O. Flipper, extiendo el presente en la ciudad de Hermosillo á los doce dias del mes de Marzo de mil ochocientos noventa y cuarto.

V. AGUILAR. [RÚBRICA.]

Filed in the office of the clerk Court of Private Land Claims May 15, 1899. Jas. H. Reeder, clerk, by , deputy.

762 DEFENDANTS' EXH. 17. Map of Cochise Co., Ariz. (Missing.)

763 DEFENDANTS' EXHIBIT 18.

Title of a grant of four sitios of land included in the tract of San Rafael del Valle, jurisdiction of the presidio of Santa Cruz, by the General Treasury of the State of Sonora, in favor of citizen Rafael Elias Gonzalez.

JOSE MARIA MENDOZA:

Treasurer-General of the free, independent, and sovereign State of Sonora:

Whereas article 11 of the sovereign decree, No. 70, of the General Congress of the Union, dated August 4, 1824, cedes to the States the revenues (rentas) which the Federation did not reserve to itself by said law, one of which is that from lands within their respective districts, which (revenues), therefore, belong to them, and (whereas) the honorable Constituent Congress of what was the united State of Sonora and Sinaloa enacted, for the sale thereof, law No. 30 of the 20th of May, 1825, and the successive legislatures other decrees relating thereto, citizen Rafael Elias, of the vicinage of this capital, having, on the 12th of May, 1827, made to the general treasury of what was the united State formal denouncement of the lands known as San Rafael del Valle, situated in the jurisdiction of the presidio of Santa Cruz, it was admitted in accordance with law under date of July 1st of said year, and the petition of denouncement, decree of commission, and act of obedience, are of the following tenor:

To the Treasurer-General: Don Rafael Elias presents himself to your excellency in due form and states that, being in need of land for live stock, he denounces the public land adjoining the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of Tres Alamos (Three Cottonwoods), and obligates himself to pay the nation the fees to which it is entitled, and such others as may be just, until he acquires the title of grant and confirmation, for which purpose your excellency will be pleased to consider said land registered and denounced according to law.

Therefore, I pray your excellency to be pleased to give orders for the decree I solicit, in which I will receive favor. In the absence and at the request of Don Rafael Elias.

JOAQUIN ELIAS.

Decree: Cosalá, July 1st, 1827. The police justice of Santa Cruz will proceed, under authority conferred on him for the purpose, without prejudice to third parties who represent a better right, and after citation of the coterminous proprietors to the survey, appraisement and publication for thirty consecutive days of the lands mentioned in the foregoing denouncement, subjecting himself fully to the sovereign decree of the honorable Constituent Congress, No. 30, of May 20th, 1825, and
764 to the regulations that accompany it, and when these proceedings are completed he shall forward them to this Treasury, after summoning the bidders that result to appear in person or by agent at the

final sale which will take place in this office after the three customary offers.

The treasurer-general of the State, Nicolas Maria Gaxiola, thus decreed and signed.

GAXIOLA.

Act of obedience: At the presidio of Santa Cruz, on the twentieth day of the month of August, eighteen hundred and twenty-seven. Comply with what is ordered in the decree of the treasurer-general of the State, Don Nicolas Maria Gaxiola, and to that end, upon citation of the parties in interest, or of their agents for the purpose, and coterminous proprietors, if any, and accompanied by the other necessary assistants appointed for the purpose, proceed to the ranch of San Pedro to make the survey of the lands denounced; that is, of those that belong and correspond to Citizen Rafael Elias, which survey shall be made separately from those to be made for the other denouncers, who made the denouncement together, and appear in the copy of the petition with which these proceedings begin.

Citizen Pablo Fraijo, constitutional police justice of the presidio of Santa Cruz, by the present decree thus decided, ordered and signed, in the presence of his attendant witnesses, in the absence of a notary public, according to law.

PABLO FRAIJO.

Witness:

SATURNINO SIMON.

Witness:

JOSE MARIA SOTELO.

The justice proceeded immediately to the appointment of assistants, tallymen, recorder, and chairmen, who were Citizens Manuel Nevia, Francisco Sandoval, Jose Samaniego, Manuel Soto, and Camilo Arvizu, who offered and promised under oath to comply faithfully and lawfully with their respective offices, and upon citation of the party in interest and the coterminous proprietors the justice made the survey set out in the following proceedings:

Proceedings of survey: At the place called San Rafael del Valle, on the twenty-first day of the month of August, eighteen hundred and twenty-seven, I, the said judge and surveyor, in order to begin the survey of the lands denounced by Citizen Rafael Elias, delivered a well-twisted and well-stretched cord to the appointed assistants and a Castilian vara, with which there were measured and counted fifty varas of said cord, and when this operation was completed its extremities were tied to a pole and, in the presence of the party in interest, the survey was commenced from the point fixed upon for center, at a place where there are several small hills (cerritos), and taking a course south there were measured and counted two hundred cords, which terminated at the survey of the ranch of San Pedro, land purchased by Don Jesus Perez, and in his name the superintendent of said ranch was present with documents showing that up to that point belonged to his survey, and the monument there located remained as the boundary of both parties in interest;
765 and having returned to the center, a course was taken to the north, measuring and counting two hundred cords, which terminated in

said valley, where there is a small limestone lookout hill (devisaderito), where I ordered a pile of stone put to mark the place for the monument, and having returned to the center, they went measuring and counting on an east course up to fifty cords, which terminated in the valley and in front of Mule Mountains, where a pile of stones was put to mark the place for the monument, from which point I went back to the center, whence the survey was continued on the west side, there being measured and counted up to fifty cords, which terminated in said valley, which is in front of the Guachuca range of mountains, where a pile of stone was put to mark the place for the monument, with which and with one hundred cords, which were measured at each extremity of the measurements from south to north, at right angles thereto, with the corresponding monuments at the extremities thereof, this survey was terminated, resulting therefrom four sitios for breeding cat'le and horses, in favor of said Citizen Rafael Elias, with which he was satisfied, and accepted the land purchased, with the understanding that he must, at the first opportunity, mark all his boundaries with monuments of lime and stone, as is provided. And in witness thereof I enter it in the proceedings, which the said Elias signed with me, the other appointed assistants not doing so because they do not know how to write, together with my attendant witnesses, in the absence of a notary public, according to law.

PABLO FRAIJO.
RAFAEL ELIAS.

Witness:
SATURNINO SIMON.

Witness:
JOSE MARIA SOTELO.

Thereupon the justice proceeded to the corresponding appraisement of the land by means of intelligent experts, who were Citizens Manuel Soto and Camilo Arvizu, who performed said office after the customary oath, and, according to their practical knowledge and in conformity with the superior provisions on the matter, they fixed the price of the sitios at two hundred and forty dollars, at the rate of sixty dollars each, because they have running water. With this appraisement the justice published them in solicitation of bidders for thirty consecutive days, from August 30th, 1827, till September 28th of the same year, and, after summoning the party in interest, transmitted them for final sale to the general treasury, which, in the decree of February 7th, 1828, forwarded them for the action of the attorney-general of the treasury, whose petition is literally as follows:

Fiscal petition: To the treasurer-general: This is an expediente that relates to the survey of four sitios for breeding cattle and horses, made by the justice of the presidio of Santa Cruz for Citizen Rafael Elias, which land is known as San Rafael. Its appraised value is two hundred and forty dollars, as computed by the individuals who performed that office, and it was sold for said sum to the party in interest. The observations of the attorney-general on the expediente might be understood with respect to the defects in the proceedings, but as they present

766 no greater difficulties, I omit them and only express astonishment that the compass was not used to make the survey, inasmuch as that instrument is indispensable for running courses; so that to measure the land again because of the lack of this requisite is to enter into difficulties and to seriously prejudice the party, for which reason the attorney-general of the treasury is of the opinion that, as there is no contradiction between the parties that shows prejudice to third parties, this defect should be overlooked and the corresponding adjudication proceeded with *with* the customary formalities and requirements. This is my way of thinking.

Conception de Alamos, February 9th, 1828.

MANUEL DE BRENA.

And the general treasury having agreed to the foregoing petition of the attorney-general, proceeded, by decree of April 16th, to the three public offers on said 16th, the 17th, and 18th in solicitation of bidders and, none having appeared, the four sitios of land for breeding cattle and horses, at the place of San Rafael del Valle, were sold to Citizen Rafael Elias, as appears from the third offer, which is as follows:

Third offer and sale. In said city, on the eighteenth day of the month of April, eighteen hundred and twenty-eight, assembled as a board of sales, the president and the voting members who compose it proceeded to make the last offer for the final sale of the four sitios of land referred to in this expediente in the same terms as the first offer herein, with the sole addition that at this moment the final sale is to be made. And the hour for midday prayer of this day having already struck, and no bidder having appeared, the public crier for the last time said: "Once, twice, three times; sold, sold, sold; may it do much good, good, good to Don Rafael Elias."

In these terms this act was concluded, the four sitios of land for breeding cattle and horses being publicly and solemnly sold to this party in interest for the sum of two hundred and forty dollars, at which they were appraised, and in due witness thereof it is set forth in the proceedings which the president and voting members of the board signed, as also did the agent, who was Don Tiburcio Gomez.

GAXIOLA.
GOMEZ.
URRIETA.
TIBURCIO GOMEZ.

Receipts for grants of lands: Two hundred and forty dollars, paid by Don Tiburcio Gomez, in the name of Don Rafael Elias, resident of Arizpe, for the grant of four sitios of land for cattle and horses, at the place called San Rafael del Valle, in the jurisdiction of the presidio of Santa Cruz, each sitio having been appraised at the rate of sixty dollars, because they have running water, and which were sold to said Elias, in the session of the board of sales held in this capital on the 18th instant, $240.00.

And in witness thereof I give the present certificate in Alamos, on the twenty-first of April, eighteen hundred and twenty-eight.

NICOLAS MARIA GAXIOLA.

767 The present original certificate having been aggregated to the expediente, it was concluded with all the requisites and formalities the laws provide, and remains in the custody of this general treasury as a perpetual evidence.

Therefore, using the powers the laws concede to me, by these presents and in the name of the sovereign State of Sonora, I confer a formal grant of the right to four sitios of land for breeding cattle and horses, which includes the tract known as San Rafael del Valle, situated in the jurisdiction of the presidio of Santa Cruz, to Citizen Rafael Elias, of the vicinage of this capital, to whom I cede, give, and adjudicate said land by way of sale and with all the qualities, firmness, and subsistence the laws establish, for himself, his children, heirs, and successors, with all their entrances, exits, uses, customs, servitudes, and others that belong to it, with the precise qualification and exact condition that they are to keep said sitios populated and legally protected, without their being depopulated, deserted, or legally unprotected for any time, with the understanding that if their total abandonment for the space of three consecutive years should occur, and there should be any person who denounces them, then, after proof of the fact, they shall be declared public lands and shall be adjudicated again to the highest bidder, excepting as is just those cases where the lack of protection is caused by the notorious invasion of enemies, and only for the time of such occurrences, cautioning the said Citizen Rafael Elias, as he is strictly cautioned, and his heirs and successors, that they are to limit and confine themselves to the land, provisions, metes, and bounds separately indicated in the foregoing proceedings of survey, observing and complying exactly with article 30 of law No. 30 of May 20th, 1825, which imposes upon them the obligation to maintain in their boundaries monuments of lime and stone, under a penalty of twenty-five dollars, which shall be exacted of them if they violate it, for the common funds, said monuments being constructed by the judge at the expense of the parties in interest.

And I order and command the judges, justices, and local authorities who now are and shall hereafter be in the district of this capital, for the good and prompt administration of justice, and in compliance with the laws on the matter, not to permit the said party in interest or his successors to be in any manner disturbed, annoyed, or molested in the free use, exercise, property, dominion, and possession of the said four sitios of land at the place of San Rafael de Valle, but rather they shall constantly watch and see, with the greatest vigilance and activity, that they are always protected and maintained in the quiet and peaceable possession to which they are entitled by legal right, so that they can in this manner freely sell, exchange, barter, donate, transfer, cede, and alienate said four sitios at their own free will and discretion as absolute owners. In which terms I issue the present formal title of grant to Citizen Rafael Elias, his heirs and successors, and deliver it to him for his security, after entry (toma de razon) in the proper book.

Given in Arizpe, the capital, on the twenty-fifth day of the month of December, eighteen hundred and thirty-two, authenticated and signed by me, sealed with the seal of this general treasury, in the presence of my

undersigned attendant witnesses, with whom I act in the absence of a notary, there being none, in accordance with law.

768 JOSE MARIA MENDOZA.

Witness:

LUIS CARRANCO.

Witness:

RAFAEL MIRANDA.

Entry of the present title is made in the proper book in this general treasury at folio 11. A rubric.

Filed in the office of the clerk Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk; by , deputy.

769 DEFENDANT'S EXHIBIT 19.

Year of 1821.

Proceedings which comprise the place called San Pedro, situated in the jurisdiction of the presidio of Fronteras. N. 640.

770 Mr. GOVERNOR INTENDENT:

I, Don Jose de Jesus Perez, a resident of this capital, before your excellency, in conformity with law and in accordance with the royal ordinance of campo, laws, sanctions, and rescripts that treat of the royal and abbatial lands with which his majesty (God preserve him) protects his vassals, as perquisites of his royal patrimony, appear and state: That whereas I enjoy some property, acquired in the military service and by my own industry, without owning a place upon which to locate and bring them together (centruarlos), I apply to the superior authority of your excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro River, situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias, be considered as registered, in virtue of which I protest that I will enter into composition with his majesty (God preserve him) and will pay the quota or cost of its purchase, the royal half annate tax and whatever else may be necessary, for such is rigorous justice with relation to what is stated. In this understanding I pray you to issue commission for the execution of the necessary proceedings, ocular examination, reconnoissance of the ground, survey, appraisement, publications, possession, and final sale of the four sitios, which will be surveyed for me in a square or oblong figure, according to the length or extent of the land and its direction, and in these terms I pray your excellency to defer to my petition by which I shall receive grace. I protest costs and whatever is necessary, etc.

JOSE DE JESUS PEREZ. [RUBRIC.]

ALAMOS, *March 12, 1821.*

Being presented and admitted without prejudice to a third party, Don Nazario Gomez will proceed to the survey, appraisement, and other customary proceedings, citing the adjoining owners, and when concluded he will report to me for such other proceedings as may be proper.

CORDERO. [RUBRIC.]

FRONTERAS, *April 28, 1821.*

Having received from the attorney, Don Rafael Silas, the foregoing superior decree of commission, let the communication requesting permission and the necessary assistance, which the constitutional alcalde of this district must furnish, be forwarded by me in order to proceed to the survey. I, Don Nazario Gomez, judge commissioned, thus decreed, ordered, and signed it, before my attending witnesses, according to law. I attest.

NAZARIO GOMEZ. [RUBRIC.]

Witness:
LUCIO GOMEZ. [RUBRIC.]

Witness:
FULGENCIO TELLES. [RUBRIC.]

Under date of the 29th instant the communication ordered in the foregoing minute was forwarded, and in witness thereof I entered this minute, which I rubricked. (Rubric of Nazario Gomez.)

771 On the 30th of the current month and year the constitutional alcalde, Don Miguel Teran, replied in a communication refusing the assistance sought by this court, in virtue of which, and in view of his asking for the transmittal of the proceedings to his possession, in the following terms (among other things) he says: "I expect of you that you will forward them to me in order to give due compliance to the superior decrees, for I can not give permission for them to be surveyed by other than myself, being under obligation to give reasons for it whenever I am asked by my superior for the motives I had therefor, which I reserve until then, with which I reply to your four communications." With this understanding, upon his responsibility, I forwarded the present proceedings to him, taking his receipt for the security of this court, and by these presents I so decreed and signed it according to law. I attest.

NAZARIO GOMEZ. [RUBRIC.]

Witness:
LUCIO GOMEZ. [RUBRIC.]

Witness:
FULGENIO TELLES. [RUBRIC.]

Writ of obedience.

FRONTERAS, *May ?, 1821.*

Having received the foregoing superior decree delivered to this court by Don Nazario Gomez, in virtue of which, and the person of Don Rafael Salas having appeared before me as the attorney of the party in interest, Don Jose Jesus Perez, whose power of attorney I certify I have seen, I said: Proceed to the survey, for which purpose appoint a promotor fiscal, expert measurers, appraisers, and a recorder of courses, and inasmuch as in the persons of Don Lucio Gomez, Don Ramon Benitez, Don Teodoro Aros, and Don Luis Aragon reside the qualities of fitness, being known practice, skill, and information, I have concluded to appoint, as I do appoint, the first as promotor fiscal for the reconnoissance of the ground, ocular examination, and recommendations in behalf

of the public treasury; the second and third, who are Benitez and Aros, for appraisers, and the fourth, Don Luis Aragon, for recorder of courses. In this understanding notify them of their appointments, that they may be sworn and commissioned upon their acceptance, and in conformity with law and with what results proceed to whatever else is required in justice. I, Don Miguel Teran, constitutional alcalde of this district and judge surveyor in this registry, so declared, ordered, and signed it, in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I, the judge surveyor, in virtue of the foregoing order, summoned, and there appeared in this court, the person of Don Lucio Gomez, and I gave him notice of and made known to him his appointment as promotor fiscal of the public treasury for the survey, and when cognizant of it all, he said: He hears it and signed it with me and those in my attendance, in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, the person of Don Lucio Gomez, the promotor fis-
772 cal appointed, being present, I administered the oath to him, which he took in due form of law, before God, our Lord, and a holy cross, under the obligations and penalties of which he offered to proceed faithfully and legally to the discharge of his commission, promising not to defraud nor consent to anything against the perquisites that belong to the public treasury which he will execute without imposition, fraud, collusion, or deception under the oath he has taken. He said he was over twenty years of age, married, a citizen, and signs it before me and those of my attendance according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

I, the said alcalde and judge-surveyor, in view of the acceptance and oath of the appointed promotor fiscal of the public treasury, Don Lucio Gomez, said: I would and do commission him to said office, and would and do sanction it by my authority and judicial decree, and would and do give him therefor all the power and authority required by law that is necessary and can and ought to be available for him to perform in the name of the public treasury all the acts, commissions, and proceedings which it of itself ought to do in the matter, and by these presents I so decreed, ordered, and signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Witness:

On the same day, month, and year, I, the said alcalde and judge-surveyor, in the presence of the appointed promotor fiscal, summoned and

there appeared before me and in this court the persons appointed, Don Ramon Benitez, Don Teodoro Aros, and Don Luis Aragon, to whom, being present, I gave notice of and made known the appointment of measurers, appraisers, and recorder of courses, and they said, each one separately and conjointly, that they would accept and did accept said appointment, and the promotor fiscal and the attending witnesses, with whom I act according to law, signed it before me. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
TEODORO AROS. [RUBRIC.]
RAMON BENITEZ. [RUBRIC.]
LUIS DE ARAGON. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, in the presence of the appointed promotor fiscal, and in virtue of the acceptance made by Don Ramon Benitez, Don Teodoro Aros, and Don Luis Aragon, in their own persons, whom I certify I know, and to each of them, severally and jointly, I administered the oath, which they took in due form of law before God, our Lord, and a holy cross, under the obligation and penalties of which they promised to proceed faithfully and lawfully, according to their best understanding and intelligence, to the just appraisement of the tract, without using therein fraud or imposition, and in witness thereof and observance of the attri-
773 bute the promotor fiscal and those of my attendance with whom I act in the ordinary manner, according to law, signed it before me. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
RAMON BENITEZ. [RUBRIC.]

Witness.
LUIS DE ARAGON. [RUBRIC.]
JUL IANTAÑO. [RUBRIC.]

In view of the acceptance and oath taken by the appraisers and the recorder, set out in the foregoing proceedings, I said: I would and do commission them to the office of expert measurers, appraiser, and recorder, which I would and do sanction by my authority and judicial decree, giving them, as I do give them by these presents, all the power and authority necessary for them to examine the lands, their pastures, timber, water holes, and watering places, and to appraise and to fix their just value according to their quality and circumstances with the legality and scrupulousness the matter requires, and by these presents I so decreed, ordered, and signed it, with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
TEODORO AROS. [RUBRIC.]

Witness:
JULIAN MONTAÑO. [RUBRIC.]
Witness:

On the third day of the month of May, I, said alcalde and judge-surveyor, in these proceedings, said: That in view of the conclusion of these

proceedings of appointment of assistants necessary for the work, inasmuch as there are no adjoining owners to summon, put up public notices summoning whomever might be thought to have a right, and by these presents let it be understood for the sixth instant, at which time the justice they demand and which favors them will be heard, attended to, and respected, and by these presents I so decreed, ordered, and signed it in ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon the public notice of summons provided for in the foregoing minute was put up, and in due witness thereof, and that it may serve the purposes of the law, I entered this minute, to which I attach my rubric. (Rubric of Miguel Teran.)

Having summoned Don Manuel Antunes, and he having replied on the 17th instant, as will be seen by his communication, which I order aggregated to the proceedings that it may serve the purposes of the law, likewise await his presence for the execution of the survey. And by these presents I so decreed, ordered, and signed it, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

774 Replying to your communication of the 16th instant, I will appear personally at the place to which I am summoned, at the survey of the lands which, on account of Don Jose de Jesus Perez, is being made on the San Pedro River, and I will there point out the lands which I find myself in disposition to immediately register until the final proceedings of composition with His Majesty are had; and in case said survey conflicts with the lands I shall point out and have held for the space of two years with my cattle, in that event I shall enter into opposition and contest for them as may be convenient to me. God preserve you many years.

Place of Terrenate, May 17, 1821.

MANUEL ANTUNES. [RUBRIC.]

Mr. Constitutional Alcalde Miguel Teran.

In the field, place of San Pedro, on the 18th day of the current month and year, I, said alcalde, in the presence of the promotor fiscal, measurers, appraisers, and recorder, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro, down the river, without any damage resulting to him in said direction, but going up the river he would be damaged, as he considered himself possessed of rights and the lands he has held included in the sitios which he expects from day to day will be adjudicated to him, to which, when stated by said Antunes and noticed by the attorney, Don Rafael Salas, the latter took exception on account of the delay that would result to the prejudice of his party by depriving him of the benefit of the water produced by the marsh (cienega) which is the mother of these pastures (ejidos), for which reason the survey in behalf of his principal would be useless; upon which

operation Antunes and Salas contended until after being reconciled, to obviate inconveniences, expenses, and damages which might result to either of the parties in interest, they yielded, and agreed to divide the water of the marsh in halves for the benefit of the farms, being obligated by this same act to preserve harmony, for they so obligated themselves, Antunes for himself and Salas in the name of his principal; in testimony of which I entered it as a minute, which the promotor fiscal and other assistants signed with me before those in my attendance with whom I act in the ordinary manner, in default of a Royal or public notary, there being none in the terms the law provides; to all of which I certify.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
RAFAEL SALAS. [RUBRIC.]
RAMON BENITES. [RUBRIC.]
TEODORO AROS. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

On the same day, month, and year, being in the field, and the parties in interest having agreed, in the presence of the promotor fiscal and other assistants, I caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted fifty cords, the last of which terminated down the river from the house, on the edge of the ford, on the bank, where
775 I had a cross monument placed; and from there there were measured and counted fifty cords, the last of which terminated in the same valley, at the edge of a hillock (loma), distant three cords, where I had a corner monument placed; and from it there were measured and counted fifty cords, the last of which terminated in front of the Guachuca Mountains, where I had a cross monument placed on a rocky hillock (loma), and from it there were measured and counted fifty cords, the last of which terminated on a cat's-claw (chinosa) table-land, where I had a corner monument placed; and from there there were measured and counted fifty cords, the last of which terminated in the canyon of the Bachata, where I had a cross monument placed, general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, two hundred cords, which make two and a half leagues; and from there, the compass being set up and taking the course northwest to southwest, there were measured and counted fifty cords, the last of which terminated in the middle of the valley of the San Pedro River, where I had a corner monument placed; and from there, on said course, there were measured and counted fifty cords, the last of which terminated, just after crossing the river, at the edge of a hillock (loma), where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated in the arroyo de las baras, where I had a corner monument placed; and from it there were measured and counted another fifty cords, the last of which terminated in a thicket of dark brush, where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated on the slope of the peak, where I had a monument placed, a general rectangular corner, this measurement enclosing two hundred and fifty cords, which make two and a half leagues for its side, with which, because of

being now late, this operation was suspended to be continued the following day. In testimony of which I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest, and those in my attendance with whom I act in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JOSE RAFAEL SALAS. [RUBRIC.]
TEODORO AROS. [RUBRIC.]
RAMON BENITES. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

On the 19th day of said month and year, in the presence of the promotor fiscal and other assistants, being in the field, at the monument at the general rectangular corner, and taking the course from northwest to southwest, there were measured and counted fifty cords, the last of which terminated in a dense thicket of brush, where I had a cross monument placed; and from it there were measured and counted another fifty cords, the last of which terminated on the arroyo del malpais, where I had a corner monument placed; and from it there were measured and counted fifty cords, the last of which terminated on the rise to a red table-land, where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner; and from it, taking the course from southwest to northwest, there were assumed to be enclosed and measured two hundred and fifty cords, which make two and a half leagues; with which operation there were located, the sides measured, surveyed, and the area
776 determined of four sitios of land for large stock, without any prejudice resulting, thanks to the concurrence of the adjoining owner, and that it may serve the purposes of the law I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest, and those in my attendance with whom I act in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JOSE RAFAEL SALAS. [RUBRIC.]
TEODORO AROS. [RUBRIC.]
RAMON BENITEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

SAN PEDRO, *May 21, 1821.*

And this survey being concluded, I said: Proceed to the appraisement and valuation, which shall be made by the expert appraisers, Don Ramon Benitez and Don Teodora Aros, after the acceptance of their office, and thereafter proceed to whatever else is required by law. And by these presents I so decreed, ordered, and signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Consequently, and in virtue of the foregoing order, in the presence of the promotor fiscal appointed, the appraisers being present, Don Ramon

Benitez and Don Teodora Aros, I notified them, in their own persons, to appraise and fix the value, in virtue of the office they had accepted, of the tract this survey covers, and when cognizant of it they said, severally and jointly, that, in view of the ocular inspection and reconnoissance they had made of the lands at the time of their survey, they appraised them, the first three at sixty dollars each and the remaining one at ten dollars; that according to their best intelligence and understanding this valuation is just and legitimate, both on account of the situation of the lands and because they are the common entrance and exit of barbarous enemies; that this consideration, together with that of being public and notorious, which is common and well known, gives the true difficulty, in the understanding that in this operation they proceeded to what the actual circumstances at present dictate, without there being fraud, deception, collusion, or deceit, force, or fear therein; for they consider only the oath they have taken. In testimony of which they so executed and signed with me, the promotor fiscal, and those of my attendance, with whom I act in the ordinary manner.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
TEODORA AROS. [RUBRIC.]
RAMON BENITEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

The four sitios of land for large stock being appraised and valued, I said: Forward these proceedings to the promotor fiscal appointed for him to deduce, according to their condition, what he considers proper to the benefit of the public treasury. And by these presents I so decreed, ordered, and signed it according to law. I attest.

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MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

MR. JUDGE-SURVEYOR:

The promotor fiscal appointed in this cause says: That, as he has with his own eyes explored the land, examined its situation, frontier line, and more or less abundance of pasture, timber, and extent of the ground, he judges as just, legal, and without burden whatever to the public treasury, for it and all the nation will be benefitted by the protection and settlement of these lands; that in this understanding he is of opinion that the corresponding information as to ability be received; for which you will summon three disinterested and truthful witnesses, and that they, after qualifying, state:

1st. If they know the party, and whether the general qualifications of the law apply to them.

2nd. If they know, are aware, or have heard said that the denouncer, Don Joseph Jesus Perez, has sufficient property with which to protect these sitios.

3rd. Finally, whether great advantages will result to the public treasury by their protection and settlement.

And when executed you will be pleased to refer them to me to deduce what concerns public rights. The undersigned states this at present.

Fronteras, May 22, 1821.

LUCIO GOMEZ. [RUBRIC.]

Proceed to receive the information which the promotor fiscal appointed solicits, to which end summon the persons of Don Jose Hoyos, Don Felix Quijada, and Don Francisco Ramirez, from whom, in the presence of the petitioner, will be received their sworn declarations as solicited, and when done, whatever else is required will be proceeded with, and by these presents I so ordered and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I summoned and there appeared in this court Don Jose Hoyos, to whom, in the presence of the promotor fiscal, the oath was administered, which he took in due form of law, before God our Lord and a holy cross, under the responsibility of which he promised to tell the truth in so far as he knew and is questioned, and being questioned in the tenor of the foregoing interrogatory, he said to the first:

That he knows the person of Don Jose Jesus Perez; that the general qualifications of the law do not apply to him, and responds

To the second: That he knows and is aware that he has sufficient property to protect and settle the lands, as it is public and notorious, and he responds

To the third: That in his opinion it is beneficial both to the public treasury and to the entire nation, since therefrom will result, without
obstacle, traffic, commerce, and industry, and other liberal and
778 industrial arts; that this is the truth, on the strength of the oath
he has taken. He said he is married, twenty-nine years of age, a citizen, and signed with me and those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
JOSE HOYOS. [RUBRIC.]

Witness:

RAFAEL YESCAS. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Thereupon I summoned and there appeared in this court Don Felix Quijada and in his own person, whom I certify I know, I administered to him the oath, which he took in the presence of the promotor fiscal, before God, our Lord, and a holy cross, under the obligation of which he promised to tell the truth in so far as he knew and is questioned and, being questioned in the tenor of the foregoing interrogatory, he said to the first:

That he knows Don Jose Jesus Perez and that the qualifications of the law do not apply to him.

To the second: That he knows by hearsay that the party registering has sufficient stock to stock and protect the tract mentioned, and he replies

To the third: That the advantages that would result to the public treasury and to the whole nation from the protection of abandoned and

depopulated places are public and notorious and matters of public talk and report and common opinion; that this is the truth on the strength of the oath he has taken. He said he was unmarried, twenty-five years of age, a citizen, and signed it before me and those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
FELIX QUIJADA. [RUBRIC.]

Witness:
RAFAEL YESCAS. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the same day, month, and year, I summoned and there appeared the person of Don Francisco Ramirez, to whom, in the presence of the promotor fiscal, I administered the oath which he took in due form of law, before God, our Lord, and a holy cross, under the obligation of which he promised to tell the truth in so far as he knew and is questioned, and being questioned in the tenor of the foregoing interrogatory, he said:

To the first: That he knows Don Jose Jesus Perez, and that the general qualifications of the law do not apply to him.

To the second: That he knows by hearsay that he has sufficient stock for the protection and stocking of this tract.

To the third: That the advantages that would result to the public treasury and to all the nation by its settlement is clearly undeniable and that this is the truth according to his judgment. He said he was married, forty years of age, a citizen, and did not sign because he does not know how. I did so with those in my attendance with whom I act in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

And this information asked for by the promotor fiscal being concluded, I said: Return it to the possession of said promotor for
779 him to deduce what he deems convenient. I so decreed and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Mr. JUDGE-SURVEYOR:

Don Lucio Gomez, the promotor fiscal appointed for this survey, says: That, in view of the condition of the proceedings, and that from them, according to their supposed condition, the protection and settlement of the tract of San Pedro result to the benefit of the public treasury and of all the nation, in consideration of the rights of said nation, and that it may be acquired, adjudicated, and sold to the best and highest bidder, you will be pleased to publish for thirty consecutive days the appraisement at which they are admitting the bids, raises, and higher offers that result and holding their rights in reserve till the day of their final disposition and sale, which shall be at the capital at Arizpe, before the provincial board of the royal treasury, presided over by the governor-intend-

ent of the province, who shall previously set a day for the sale, and do everything else required by the custom of universal legal practice according to law. This is all the undersigned has to state submitting his judgment to the probity of the wise government and to the learning of the deputy legal adviser of the province.

Fronteras, May 26, 1821.

LUCIO GOMEZ. [RUBRIC.]

FRONTERAS, *May 27, 1821.*

Having examined the opinion of the promotor fiscal appointed, I said: Publish the tract of San Pedro and its appraisement admitting the bids, raises, and higher offers that may be made, and by these presents I so decreed, ordered, and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On said day, month, and year, I, the judge-surveyor, caused Lazaro Quijada, at the sound of the drum and in a clear, loud, and distinct voice, to announce: It is made public and notorious that Don Jose Jesus Perez has registered the place of San Pedro, and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which everyone who believes he has a well-founded right or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be in Arizpe on the day designated by the governor-intendent of the province, to which end his actions and rights are reserved, and no bidder having appeared I entered it as a minute which I signed with those in my attendance, according to law, as I certify, and on this paper without prejudice to the royal revenue.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

780 On the 28th day of said month and year I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 29th day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the

public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUINTANA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 30th of the current month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 31st day of said month and year I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidders, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 1st of the month of June of the year 1821, I, the alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 2nd day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 3rd day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public
781 crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 4th day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidders, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 5th day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 6th day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 7th of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 8th of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 9th day of said month I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

782 Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 10th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 11th day of said month and year, I, the judge-surveyor, caused Lazaro Quijada to announce at the sound of the drum and in a loud, clear, and distinct voice: It is made public and notorious that Don Jose Jesus Perez has registered the place of San Pedro, and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which everyone who believes he has a right to the tract or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his action reserved till the day of the disposition and sale, which will be at Arizpe, on the day designated by the governor-intendent of the province, for which purpose his actions and rights are reserved; and no bidder having appeared, I entered it as a minute, which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 12th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 13th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 14th of said month, I, the alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 15th day of said month, I, the said alcalde, caused the
783 grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 16th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 17th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 18th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 19th day of the current month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 20th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

784 On the 21st day of this month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute, which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
FELIX QUIJADA. [RUBRIC.]
Witness:
JULIAN MONTAÑO. [RUBRIC.]

On the 22nd day of said month I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and, there being no bidder, I entered it as a minute, which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 23rd day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and, there being no bidder, I entered it as a minute, which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 24th day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and, there being no bidder, I entered it as a minute, which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 25th day of said month I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and, there being no bidder, I entered it as a minute, which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 26th day of the current month and year I, the constitutional alcalde and judge-surveyor of this grant, said: The proceedings corresponding to the survey being completed, forward them to the superior authority of the governor-intendant, for his excellency to make such orders as meet his superior pleasure, and by these presents I so decreed,

ordered, and signed it before those in my attendance and on this paper, without prejudice to the public revenue. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:
JOSE HOYOS. [RUBRIC.]
Witness:
FELIX QUIJADA. [RUBRIC.]

785 Mr. GOVERNOR-INTENDENT:

I transmit to your hands the proceedings of survey, ocular insoection, appraisement, and publications executed on the depopulated tract of San Pedro, in favor of Don Jose Jesus Perez, for your excellency to make such order as may be just. God preserve your excellency many years.

Fronteras, June 26, 1821.

MIGUEL TERAN. [RUBRIC.]

Mr. GOVERNOR-INTENDENT,
Don Antonio Cordero.

ARIZPE, *July 9, 1821.*

To the promotor fiscal, Cordero.

Mr. INTENDENT: The promotor fiscal of this intendency says that these proceedings of survey, appraisement, valuation, information of ability and publications of four sitios of royal land for raising large stock comprised in the place called San Pedro, situate in the jurisdiction of the presidio of Fronteras, appraised in the sum of one hundred and ninety dollars, at the rate of sixty dollars each for the first three and ten dollars for the remaining one, are executed in full conformity with the royal and superior orders that are a rule in the matter. This being understood, and in attention to the merit which of itself is involved in the granted petition of the party in interest, because that royal tract is so much the more dangerous on account of the Apache enemy who hostilizes that frontier, the settlement of the same is so much the more convenient and advantageous, the fiscal defender of the public treasury asks that you be pleased, if you think proper, to order that upon citation of the parties the celebration of the three customary public offers be proceeded with in this capital, in solicitation of bidders for the final sale of said surveyed lands, which shall be determined at the last of them in favor of the highest and best that results; and he shall be made to understand that he must pay into the treasury the principal value at which said four sitios were sold to him, their half annate tax and 18 per cent for transmittal, the 2 per cent ordered collected as a general tax and three dollars for the officers aggregated to the office of the auditor-general of the army; and that when these proceedings are examined and approved in the provincial board the corresponding certificate being aggregated to them as a voucher for said payment, let report be made therewith to the superior board for the decision that is proper. This is my opinion, which has not been issued from the fiscal office till to-day, because the proceedings have been involuntarily mislaid therein; but you, nevertheless, will decide what meets your superior pleasure.

Arizpe, June 25, 1822.

FRANCISCO PEREZ. [RUBRIC.]

ARIZPE, *July 3, 1822.*

As appears to the promotor fiscal of this intendency in his foregoing reply, proceed to the celebration of the three public offers and sale of the lands called San Pedro of which these proceedings treat, first summoning the attorney of the party in interest, Don Jose Maria Serrano. The intendent of this province so decreed, ordered, and signed it with
786 attending witnesses in default of every kind of notary.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

Thereupon, Don Jose Maria Serrano being present, he was notified of the fiscal opinion and the order in concurrence which precedes, and made himself cognizant thereof and signed it with the intendent and his attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

1st offer. In the city of Arizpe, on the 3rd day of the month of July, there having assembled as a board in this said capital the intendent, as president, and the members who compose it, for the purpose of making the first offer of the lands to which these proceedings refer, they caused many individuals to be assembled, at the sound of the drum, in the office of this intendency, and the public crier, Loreto Saleido, to proceed, in their presence, to make a publication, as he in effect did, saying in a loud and clear voice: There are going to be sold by this board of sales four sitios of royal land for raising cattle, comprised in the place called San Pedro, situate in the particular territory of the presidio of Fronteras, surveyed for Don Jose Jesus Perez, of this city, and appraised in the sum of one hundred and ninety dollars, at the rate of sixty dollars each for the first three and ten dollars for the other one. Whoever wishes to make a bid for said royal land, come forward and make it before this board, where that made in regular form will be admitted, with the understanding that in the third and last offer, which is to be made the day after to-morrow, the final sale will be made to the best and highest bidder. And no bidder having appeared, it was entered as a minute, which the president and members of the board of sales signed.

BUSTAMANTE. [RUBRIC.]
FUENTE. [RUBRIC.]
ELIAS GONZALEZ. [RUBRIC.]
PEREZ. [RUBRIC.]

2nd offer. In said city, of the 4th day of said month and year, the making of the second offer in these proceedings was proceeded with, being made in the same terms as the first preceding, with only the difference of stating to the public that the final sale would be made to-

morrow. But no bidder having appeared, it was entered as a minute, which the president and members of this board of sales signed.

BUSTAMANTE. [RUBRIC.]
FUENTE. [RUBRIC.]
ELIAS GONZALEZ. [RUBRIC.]
PEREZ. [RUBRIC.]

787 3rd offer. In the city of Arizpe, on the 5th day of the month of July, 1822, having assembled as a board of sales in this said capital the intendent, as president, and the members who compose it, for the purpose of making the third and last offer of the lands to which these proceedings refer, they caused many individuals to assemble, at the sound of the drum and the voice of the public crier, in the office of this intendency, and Loreto Saleido to proceed to make, in their presence, a publication, as he in effect did, similar in all respects to the one set out in the preceding offer, with only the difference of announcing to the public that the final sale is now to be made to the highest and best bidder. In which act appeared Don Jose Maria Serrano as attorney of Don Jose Jesus Perez, again offering the value of the land, and the hour for midday prayer of this day having already been struck, the public crier finally said: Once, twice, three times; sold, sold, sold; may they do good, good, good to Don Jose Jesus Perez. In these terms this act was concluded, the four sitios of royal land referred to in these proceedings being solemnly sold in favor of this party in interest for the sum of one hundred and ninety dollars, and in due witness thereof this minute was entered, which the president and members of the board of sales signed with the attorney, Don Jose Maria Serrano.

BUSTAMANTE. [RUBRIC.]
FUENTE. [RUBRIC.]
ELIAS GONZALEZ. [RUBRIC.]
PEREZ. [RUBRIC.]

Arizpe, July 6, 1822.—Forward these proceedings by way of reference, with a testimonio authenticated and inclusive of the superior determinations that govern in the matter to the attorney, Don Jose Maria Serrano, for him to proceed, within three days, to state, in favor of his party, whatever occurs to him in the present matter, notifying him to appoint in Mexico a person under pay to attend to it at that court. The intendent ad interim of this province so decreed and signed it with attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:
JOAQUIN ELIAS GONZALEZ. [RUBRIC.]
Witness:
ANTONIO APALATEGUI. [RUBRIC.]

NOTE.—On said day, month, and year these proceedings and said testimonio were delivered on written leaves to said attorney. (Rubric of Bustamante.)

Mr. INTENDENT: I, Don Jose Maria Serrano, as attorney of Don Jesus Perez, a resident of this place, appear before you and state: That I promptly return these proceedings on the lands called San Pedro and the testimonio that have been referred to me, stating that I am satisfied with what has been done up to their actual condition of sale, as they are fully in conformity with the superior orders that govern in the matter and are included in said testimonio, and it only remains for me to pray you to be pleased to provide for the prompt conclusion and conduct of these proceedings, so that, when approval of the Superior Board of the
788 Treasury is obtained, there may be issued in favor of my party the corresponding title of grant and confirmation of the four sitios which said land contains, being prompt to appoint in Mexico a person under pay and expenses, to be charged with managing the present matter at that court. Therefore I ask and pray you to be pleased to order as I request, as my party will thereby receive grace and favor, in whose conscience I swear there is no bad faith, etc.

JOSE MARIA SERRANO. [RUBRIC.]

Order upon examination: In the city of Arizpe, on the 6th day of July, 1822, the intendent ad interim of these provinces of Sonora and Sinaloa, Proprietary Treasurer Don Ignacio de Bustamante y Velasco, having examined these proceedings of survey, appraisement, publications, offers and sale of the lands called San Pedro, surveyed for raising large stock and horses in behalf of Don Jose Jesus Perez, a resident of this city, and situated in the particular territory of Fronteras, the reply given by his attorney, Don Jose Maria Serrano, in the foregoing communication, with everything else set out and proper to examine, said: That declaring, as he declares, the said proceedings sufficient, conformable, and in accordance with the superior orders that govern in the matter, and admitting, as he at once admits, the said Don Jose Jesus Perez to composition with the imperial treasury for said royal land, it was his duty to order, and he did order, that his attorney be notified and informed to proceed to pay into this treasury the sum of two hundred and eight dollars, one grain, in this form: One hundred and ninety dollars as the principal value at which there were sold to said party in interest the four sitios which said place comprises; eleven dollars, one real, eight grains, for the half annate tax and their 18 per cent for transmittal; three dollars, six reals, five grains, being the two per cent ordered collected as a general tax, and the remaining three dollars as perquisites of the extinguished office of the auditor of the said revenue, and when this payment is made and the corresponding certificate as a voucher therefor is attached to these proceedings, report with the same to the superior board of the treasury for its approval or the decision that is proper. The intendent by this order, upon examination so provided, ordered and signed it, with attending witnesses, in default of a notary.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

Thereupon the attorney, Don Jose Maria Serrano, being present, he was *notified of the foregoing order*, of which he made himself cognizant, and signed it, with the intendent and attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:
JOAQUIN ELIAS GONZALEZ. [RUBRIC.]
Witness:
ANTONIO APALATEGUI. [RUBRIC.]

PROVINCIAL BOARD OF THE IMPERIAL TREASURY,
Arizpe, July 7, 1822.

Approved. Let it be declared at once that there have been legally, publicly, and solemnly sold by the board of sales in this capital, on the 5th instant, in favor of Don Jose Jesus Perez, the four sitios of 789 royal land for raising large stock which the place called San Pedro comprises, situated in the particular territory of the presidio of Fronteras, for the sum of one hundred and ninety dollars, being their just value, and in consequence report with these proceedings to the superior board of the treasury for its approval or the decision that may be proper, as ordered by this intendency in its foregoing order. The president and members of this provincial board so ordered and signed it.

BUSTAMANTE. [RUBRIC.]
FUENTE. [RUBRIC.]
ELIAS GONZALEZ. [RUBRIC.]
PEREZ. [RUBRIC.]

ARIZPE, *July 7, 1822.*

Comply with the resolution of the provincial board of this intendency in its foregoing resolution of to-day.

BUSTAMANTE. [RUBRIC.]

Antonio Carrillo, commissary of the branch of the treasury in Arizpe' in the internal State of Sonora, certifies that at folio 55 of the handbook of receipts and disbursements for the year 1822 there is made the following entry:

July 8. Receipts of two hundred and eight dollars, one grain, paid into this treasury by Don Jose Maria Serrano, in the name of and as the attorney of Don Jose Jesus Perez, a resident of this city, in this form: 190 dollars as the principal value at which were sold to him by this intendency four sitios of royal land for raising large stock comprised in the place called San Pedro, situated in the particular territory of the presidio of Fronteras; 11 dollars, 1 rl., 8 gr., for the half annate tax and its 18 per cent; 3 dollars, 6 rs., 5 gr., for the 2 per cent ordered collected as a general tax, and the remaining three dollars as the perquisites of the extinguished office of the auditor of said revenue, as explained in the communication of said intendency marked No. 30..... 8208 0 1

FUENTE,
GONZALEZ,
JOSE MARIA SERRANO.

And in witness thereof wherever necessary I give the present certificate in duplicate, at the request of the treasurer-general of the State, Don Jose Maria Mendoza, on this common paper, in default of the official, in Arizpe, on the 25th of October, 1832.

ANTONIO CARILLO. [RUBRIC.]

Mr. TREASURER-GENERAL:

I, Ignacio Perez, in the name of my brother, Jose de Jesus, appear before you in due form and state: That from the original proceedings, which I place in the hands of your excellency, you will have the kindness to inform yourself that on the 5th of July, 1822, there were sold in favor of my brother the land called San Pedro, situated in the jurisdiction of Fronteras, including four sitios of land, and having lawfully exchanged the right he had thereto with citizen Rafael Elias,
790 and inasmuch as the corresponding title to the grant has not yet been issued, I ask and pray you to be pleased to order the corresponding title issued to said citizen Rafael Elias as the actual owner and proprietor of the land of San Pedro. It is grace I ask of your excellency, protesting there is no bad faith.

Arizpe, October 25, 1832.

IGNACIO PEREZ. [RUBRIC.]

ARIZPE, *October 25, 1832.*

Presented with the accompanying proceedings, give account with the necessary report to the supreme magistrate of the State, in compliance with the provisions of article 28 of law No. 30 of May 20, 1825, for the corresponding orders. The treasurer-general of the State of Sonora so provided, ordered, and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Witness:

MARIANO ROMO. [RUBRIC.]

Witness:

JOSE MARIA PEREZ. [RUBRIC.]

ARIZPE, *October 31, 1832.*

Aggregate to these proceedings a copy of the consultation sent to the supreme magistrate and the original resolution of said superior authority and issue in virtue thereof, the corresponding title to the grant in favor of Citizen Rafael Elias, for four sitios of land at the place of San Pedro. The treasurer-general of the State so provided and signed it with attending witnesses according to law.

MENDOZA. [RUBRIC.]

Witness:

LUIS CARRANCO. [RUBRIC.]

Witness:

BARTOLO MIRANDA. [RUBRIC.]

Treasury-general of the State.

MOST EXCELLENT SIR: Citizen Ignacio Perez, of this place, has put in my hands, with the corresponding application, the proceedings which I have the honor to place in the hands of your excellency, comprehensive of the registry, survey, appraisement, publications, and sale of four

sitios of land, at the place called down the San Pedro River, in favor of Citizen Jose de Jesus Perez. He also shows by the certificate, which is likewise aggregated to the proceedings, that he paid into the national treasury in this capital the sum of two hundred and eight dollars, one grain, for the principal value of the land and its corresponding taxes; and he asks finally that, having made an exchange with Citizen Rafael Elias, the corresponding title for the grant be issued to him, complying at the same time with article 27 of law No. 30 of May 20, 1825, and this treasury in reporting to your excellency in compliance with the 28th of said law, has the honor to state to you that it considers said proceedings sufficient, legal, and concluded with the formalities established by the laws and consequently in condition for the issue of the title asked for, nevertheless your excellency will deign to decide whatever meets your superior pleasure.

God and liberty. Arizpe, October 25, 1832.

JOSE MARIA MENDOZA.

His excellency the governor of the State.

It is a copy. Arizpe, October 25, 1832.

MENDOZA. [RUBRIC.]

791 A seal which reads: Government of the free State of Sonora. Having examined the proceedings on the lands which your excellency transmits with your note of the 25th ultimo, comprehensive of four sitios surveyed at the place called down the San Pedro River, in favor of Don Jose Jesus Perez, I return it to your excellency for you to issue to Don Rafael Elias the corresponding title for the grant, in view of the exchange Don Ignacio Perez, of this place, has made with him.

God and liberty. Arizpe, October 31, 1832.

IGNACIO BUSTAMANTE. [RUBRIC.]
LUCAS RODRIGUEZ, [RUBRIC.]
Chief Clerk.

Mr. TREASURER-GENERAL OF THE STATE.

Filed in the office of the clerk Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk. By , deputy.

792 DEFENDANTS' EXH. 20.

Title of a grant of four sitios of land for breeding cattle, comprised in the place called San Rafael de la Zanja, situate in the jurisdiction of the presidio of Santa Cruz, issued in favor of Don Ramon Romero and other shareholders, residents of said presidio.

Second seal 12 reals. Years of 1825 and 1826.

Juan Miguel Riesgo, commissary-general of the treasury, public credit and war, of the internal State of the West:

Whereas article 81 of the ordinance of intendents of the 4th of December, 1786, confers on these magistrates cognizance and jurisdiction of surveys, sales, and adjustments of lands in their respective districts, the tenor of which is literally as follows:

"Art. 81. The intendents shall also be judges with exclusive jurisdiction over all matters and questions that arise in the provinces in their districts, in relation to the sale, adjustment, and distribution of Crown

and manorial lands. The holders thereof and those who seek new grants of the same shall set up their rights and make their applications to said intendents who, after the matter has been duly examined into
793 by an attorney of the royal treasury appointed by themselves, shall take action thereon in accordance with law and with the assistance of their ordinary legal advisers. They shall admit appeals to the superior board of the treasury or, should the parties in interest fail to employ that recourse, submit report thereto, together with the original proceedings, when they consider them in condition for the title to be issued. The board shall, after examination thereof, return them either for the title to be issued, if no correction is necessary, or before doing so for such other proceedings as in the opinion of the board are required, with the necessary instructions. In the meantime, and without further delay, the necessary confirmation may be made, which said superior board shall issue at the proper time, proceeding in this matter, as also the intendents, their deputies and others, in accordance with the requirements of the royal instructions of October 15th, 1754, in so far as they do not conflict with the present instructions, without losing sight of the wise provisions of the laws therein cited, and of law 9, Title XII, book 4."

In consequence thereof and as Don Manuel Bustillo, a resident of the presidio of Santa Cruz, on the 19th of July, 1821, made formal registry, before the late governor-intendent of Sonora and Sinaloa, Brigadier Don Antonio Cordero, of four sitios of land for breeding cattle at the place called San Rafael de la Zanja, situate in the jurisdiction of said presidio, it was admitted according to law and ample commission given to the commandant of that company, Captain Don Simon Elias Gonzalez, for the corresponding survey, which application, decree, and minute of obedience are as follows:

794 To the governor-intendent: I, Don Manuel Bustillo, a resident of the Presidio of Santa Cruz, before the superiority of your excellency, with proper respect and in due form of law, appear and state: That I have a considerable amount of stock, horses, and cattle, and need land for their preservation and increase, and for that purpose register three sitios of land within said presidio where I reside adjoining and beyond the boundaries thereof to the north, and one sitio more for a stock farm in the place Cajoncito, to the east.

Wherefore I pray your excellency to be pleased to issue the usual orders for the survey of said land to whomsoever may meet your approval, and, sir, that the commissioner in his appraisement take into consideration the fact that the land I apply for is contiguous to the country of the hostile Apaches where, up to the present, they have not failed to commit depredations.

Therefore I pray your excellency to be pleased to order done as I request, whereby I shall receive favor and justice, and I swear there is no malice and whatever is necessary. To the governor-intendent.

MANUEL BUSTILLO.

ARIZPE, *July 19th, 1821.*

Presented and admitted without prejudice to third parties who have a better right. The commandant of the company of Santa Cruz will proceed to make the survey of the lands registered by the applicant, summon

the owners of coterminous lands and appoint expert appraisers to make a fair valuation thereof, which he shall publish for thirty consecu-
795 tive days in solicitation of bidders, and shall take all the usual proceedings until the expediente is in condition for the final sale, and for those to be taken in this court of exclusive jurisdiction for the issuance of the corresponding title.

Minute of acceptance.

SANTA CRUZ, *October 4th, 1821.*

The present decree, issued on the 19th of last July by the governor-intendent, Brigadier Don Antonio Cordero, having been presented to me by Don Manuel Bustillo, a resident of this place, I stated that, accepting as I at once accepted the commission contained in said decree, I should order and did order that, after summoning the party in interest and the owners of coterminous tracts, and accompanied by the necessary assistants, who will be appointed for the purpose, I proceed to-morrow to begin the survey of the four sitios for breeding cattle at the place La Zanja, as stated; thus by this decree, which will be made known to the parties in interest, I, the commissioner, Don Simon Elias Gonzales, captain of the company which garrisons this post, provided, ordered, and signed, before attendant witnesses, in the absence of a notary, there being none, in the terms the law prescribes.

SIMON ELIAS GONZALEZ.

Witness:
LORENZO SORTILLON.

Witness:
RAMON ROMERO.

Thereupon said commandant proceeded to summon the owners of coterminous lands and to appoint the several assistants, who were Don José Antonio Calvo for tallyman, Tomas Gauna for recorder, and Felipe Jaramillo and Leandro Romero for chainmen, who, under formal
796 oath, offered to discharge their duties well and faithfully, according to their knowledge and understanding, and, after seeing and reconnoitering the land, made the survey on the 5th and 6th of said October, 1821, in the manner set out in the following proceedings:

Proceedings of survey.

Thereupon, on said day, month, and year, I, said commissioner, to begin the survey of the four sitios for breeding cattle, denounced by Don Manuel Bustillo of this place, delivered a waxed and twisted hempen cord to the appointed assistants, and also a Castillian vara, with which they measured and counted, in my presence, fifty usual varas, and when this operation was concluded they tied a pole to each extremity, and being at the center point, which the denouncer fixed with the name of San Rafael, he requested that inasmuch as the place Los Cajoncitos, which he asked for for stock farm, was recognized as being within the town lands of this presidio, it be aggregated to the three sitios he had applied for on said, land, and as his request was just, the survey was begun to the north where they proceeded and measured two hundred cords, which terminated on a mesa on the edge of a creek which runs toward the peñasco at the foot of an oak tree, on which a cross was cut and, besides, a pile of stone

placed at its foot to mark the place for the monument; returned to the center, they went south, measuring another two hundred cords, which terminated at the mouth of the Potrero Canyon, at the same point where the north monument of the lands of this presidio is situated; returned to the center, they measured and counted east two hundred cords, which terminated beyond said Potrero Canyon on a mesa contiguous
797 thereto, where a large pile of stone was put to mark the place for the monument; and returned to the center, one hundred and thirty-three cords were measured west, since it was not possible to measure the remaining sixty-seven to complete the two hundred, on account of the roughness of the ground, but it was estimated that they would terminate on the summit of a high hill in the Plomosa range of mountains almost southwest from the small hill known as the Caloso, and its summit was immediately marked for a monument. With this act this operation was suspended, as it was now late, to continue the lines at right angles to-morrow. And in witness thereof I enter this minute and those of the appointed assistants who know how, and the party in interest signed it with me, and my attendant witnesses, in the ordinary form.

SIMON ELIAS GONZALEZ.
ANTONIO CALVO.
MANUEL BUSTILLO.

Witness:
LORENZO SORTILLON.
Witness:
RAMON ROMERO.

Continuation of the survey.

At said place of San Rafael, on the 6th of said month and year, I, said commissioner, for the purpose of giving the corresponding cords to the lands surveyed yesterday, accompanied by the assistants appointed, went to the point where the two hundred cords terminated to the north, from which monument there were estimated, to the east, on account of the roughness of the ground, two hundred cords, which terminated at the point of the Cobra Mountains, above the spring known as the
798 Carricillo, where the corner monument should be placed, and also another two hundred cords were estimated west, on account of the roughness of the ground, and terminated at the foot of a red hill, which is seen through an opening between the peñasco and the Sonoita Mountain and should serve as a monument. From this point there were estimated south, along the Plomosa Mountains, four hundred cords to a point beyond the San Antonio Pass, on two small hills that serve as the west corner of the lands of this presidio, which point should serve as the corner monument of these sitios, from which point east there were measured and counted two hundred cords which terminated at the north monument of said town lands, which is situated where the Potrero canyon enters the valley, from which, continuing the cord east, there were measured another two hundred cords which ended on the Jaralito at the corner monument of the lands of the aforesaid presidio; thence north there were estimated four hundred cords, over the inequalities of the ground, which should end above the Carricillo spring, with which survey was formed the square of the four sitios registered by Don Manuel Bustillo for breeding

cattle, who accepted the same and was cautioned that he must, at the first opportunity, mark his boundaries with monuments of stone and mortar as provided, and he signed it with me, the assistants who know how, and my attendant witnesses in the ordinary form.

SIMON ELIAS GONZALEZ,
MAUEL BUSTILLO.

Witness:
LORENZO SORTILLON.
Witness:
RAMON ROMERO.

799 Thereupon said commandant proceeded to the corresponding appraisement, by intelligent experts, who were Don Alejo Bedoya and Tomas Gauna, who, under formal oath, made it in accordance with the knowledge they had of all the land and with the superior dispositions on the matter, giving a value of sixty dollars to each of the three sitios that have permanent water, and thirty dollars to the other one, as it is only susceptible of improvement by wells; with this fair valuation the commandant of Santa Cruz published said four sitios for the term of thirty consecutive days in solicitation of bidders. None appeared, and he then took the sworn testimony of three witnesses, who declared that Don Manuel Bustillo had sufficient stock to keep the land stocked and in this condition forwarded the expediente to the intendancy, which, by decree of December 11, 1821, forwarded it to the attorney-general.

To the intendent ad interim: The attorney-general of this intendancy has examined with due attention this expediente of the lands surveyed for Don Manuel Bustillo, a resident of the presidio of Santa Cruz, by the commissioner, Don Simon Elias Gonzalez, captain and commandant of said post, in the place called San Rafael de la Zanja, in that jurisdiction, from which there resulted four sitios for breeding cattle and horses, which were appraised by two experts appointed for the purpose, at the rate of sixty dollars each for three of them, as they had running water, and thirty dollars for the fourth, as it had none and could only be improved
800 by wells, which two amounts make two hundred and ten dollars, and having published them thirty consecutive days no bidder appeared who would raise said valuation. He then proceeded to take the customary information which shows that the party in interest, Bustillo, has sufficient stock to keep the land stocked and protected, in view of which the respondent prays that you be pleased, if you see proper, to order the three public offers made in this capital, summon bidders, and sell the land to the highest and most advantageous that may appear, with the understanding that he must pay into this national treasury the full value of the land, the half annate tax, 18 per cent for its transmittal, two per cent ordered collected as a general tax, and three dollars for the officers of the extinguished auditor's office of the army, and give him the necessary certificate to vouch for said payment, which shall be aggregated to this expediente, and to report therewith to the superior board of the treasury for the decision it may see proper to make, or notwithstanding my opinion which is subordinate to your own, you will determine what is best.

December 20, 1821.

FRANCISCO PEREZ.

And the intendancy having approved the foregoing petition of the attorney-general proceeded to make the first public offer on the 8th of January, 1822, at which Don Ramon Romero appeared for himself and in the name of the residents of the presidio of Santa Cruz and bid ten dollars over the valuation of the land, and it was immediately
801 raised by Don Manuel Bustillo, for which reason one and then the other of said bidders alternately raised the bids until the last one made by Don Ramon Romero reached one thousand two hundred dollars. The other two offers were published on the 9th and 10th of said month. No higher bidder appeared, and the said four sitios of land, comprising the place of San Rafael de la Zanja, were sold to Don Ramon Romero and residents of Santa Cruz. The expediente is then referred to the former. He replied that he was satisfied with everything that had been done and requested that he be admitted to adjustment with grant and confirmation. In view of which it was provided and ordered as follows:

Decree in view of the foregoing.

In the city of Arizpe, on the eleventh day of January, eighteen hundred and twenty-two. The intendant ad interim of the province of Sonora and Sinaloa, Don Ignacio de Bustamante, having examined these proceedings of survey, valuation, publications, public offers, and sale of the four sitios of crown lands for breeding cattle, comprising the place called San Rafael de la Zanja, situate in the jurisdiction of the presidio of Santa Cruz, sold to Don Ramon Romero and other residents of said military post, the reply given by said Romero in his preceding communication and everything else set forth that was proper to examine, said: that, declaring as he declares said proceedings sufficient, conformable, and correct in every particular, and admitting, as he at once admits, the said Ramon Romero and residents of Santa Cruz to adjustment with the national treasury, he should order and does order that the former be notified and informed to pay into the public treasury in this city
802 the sum of one thousand two hundred and ninety-seven dollars six reals and five grains in this form; one thousand and two hundred dollars, at which said lands were sold to him by this intendancy; seventy dollars six reals five grains, the half annate tax and eighteen per cent thereof; twenty-four dollars, the two per cent ordered collected as a general tax, and the remaining three dollars, perquisites of the extinguished auditor's office of said department, and as soon as said payment is made, and the corresponding certificate as a voucher therefor is put in the expediente, report therewith shall be made to the superior board of the treasury for its approval or the decision it may see proper to make; and by this decree he thus determined, ordered, and signed with attendant witnesses in the absence of a notary.

IGNACIO DE BUSTAMANTE.

Witness:
JOSÉ MARIA MENDOZA.

Witness:
JOAQUIN ELIAS GONZALEZ.

As soon as notice of this decree was given to said Romero and this expediente was examined and approved by the provincial board of the

extinguished intendancy of Sonora and Sinaloa on the 11th of said January, the party in interest proceeded immediately to make the payment into the national treasury at Arizpe, the officers of which issued the certificate which is copied literally:

We, the chief officers of the national treasury at Arizpe and its province, certify that at folio 3 of the manual for the present year we have entered the following item:

803 January 11th. Receipt of one thousand two hundred and ninety-seven dollars six reals five grains, paid by Don Ramon Romero of Santa Cruz in this form: 1,200 dollars, the principal value at which have been sold to him by this intendancy four sitios of land for breeding cattle, comprising the place called San Rafael de la Zanja, situate in the jurisdiction of said presidio; 70 dollars 6 reals 5 grains for the half annate tax and 18 per cent thereof for its transmittal to Spain; 24 dollars, corresponding to 2 per cent, ordered collected as a general tax, and the remaining three dollars, perquisites of the extinguished auditor's office of said department, as explained by the communication of the intendancy, marked No. 1, $1,297 6 5.

ESCALANTE.
FUENTES.
RAMON ROMERO.

And in witness thereof wherever necessary we give the present certificate.

Arizpe, January 11, 1822.

TOMAS DE ESCALANTE.
MIGUEL MARIA DE LA FUENTE.

804 The foregoing certificate being aggregated to the expediente in the matter, it remains in the custody of the commissariat-general under my charge as a perpetual evidence, the necessary title being issued to the parties, as the late superior board of the treasury in Mexico has been extinguished.

Therefore, using the powers stated in the hereinbefore inserted article 81 of the ordinance of intendants and in accordance with the provisions of the instructions of October 15, 1754, in so far as they do not conflict with the actual system, by these presents, in the name of the sovereign nation of the Republic of Mexico (which God preserve), I confer grant and confirmation of the four sitios of land for breeding cattle comprising the place called San Rafael de la Zanja, situate in the jurisdiction of the presidio of Santa Cruz, on Don Ramon Romero and the other residents in interest of said military post, granting and adjudicating to them said land, by way of sale, with all the qualities the law provides, for themselves, their children, heirs, and successors, with all their entrances, exits, uses, customs, servitudes, timber, woods, pastures, waters, springs, drinking places, and others that pertain to them, with the precise quality and exact condition that they are to protect and populate said lands without their being depopulated or unprotected for any time, with the understanding that if their total abandonment should occur for the space of one full year, and there should be any person who denounces them, in such event, after verification of the fact, they shall be adjudicated to the

highest bidder that appears, excepting, as is just, those cases
805 where the lack of protection is due to the invasion of the hostile Apaches, who terrorize the frontier. The said Don Ramon Romero and residents of Santa Cruz are likewise cautioned that they must limit themselves to their several metes and bounds, which they must mark with monuments of stone and mortar. And the alcaldes and justices who at present are and shall hereafter be in the presidio of Santa Cruz and in the district of Arizpe, for sake of the good administration of justice and in obedience to the laws on the matter, shall not permit said parties in interest nor their successors to be disturbed in any manner in the free use, exercise, property, dominion, and possession of said four sitios of land comprising the place called San Rafael de la Zanja, but rather shall watch and see, with the greatest activity, that they are always protected and maintained in the quiet and peaceable possession of said lands. In which terms I issue the present title of formal grant and confirmation to said Don Ramon Romero and shareholders, and deliver it to them for their security after entry thereof in the proper book.

Given in the village of Fuerte, on the fifteenth of May, eighteen hundred and twenty-five, authenticated and signed by me, sealed with the seal of this commissariat-general, and compared by the undersigned provincial secretary of the same.

[SEAL.] JUAN MIGUEL RIESGO.
JOSÉ MARIA MENDOZA.

Entry of this title is made at folio 3 of book No. 2 that exists in this commissariat-general.

Filed May 15, 1899. Jas. H. Reeder, clerk.

806 DEFENDANTS' EX. 21.

ARIZPE, *January 16, 1831.*

Mr. RAMON ROMERO.

MY DEAR AND ESTEEMED SIR: The commissariat-general of this State has entrusted to me the delivery, to the respective parties in interest, of various titles to the grant and confirmation of lands surveyed, appraised, sold, and adjudicated by the treasury of the federation prior to the classification of revenues, upon previous payment of fifty dollars in fees due on each one of them; and that of the place called San Rafael de la Zanja, which was knocked down to you and the other residents of that presidio on the 10th of January, 1822, being among said titles, I inform you thereof that you may be pleased to take it out of the section of the treasury under my charge as soon as possible, as is requested by your attentive, affectionate, obedient servant, who kisses your hands.

J. M. M. [RUBRIC.]

Filed in the office of the clerk, Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk. By , deputy.

807 DEFENDANTS' EXH. 22.

MR. TREASURER-GENERAL:

The lands of San Rafael de la Zanja, surveyed in behalf of this community (vecindario), the titles to which they preserve in their possession, they have always endeavored to settle and to erect upon them their improvements (fincas) of corrals and others that are suitable to one who resettles; the frequent incursions of enemies have caused them to suspend this undertaking, and, inasmuch as an abandonment may be attributed to them therefor to-morrow and a motive may result therefrom for denouncing said lands as against them, they have unanimously proposed to me to inform your excellency that they intend to begin their improvements (fincas) together on the commons (ejidos) of the presidio, distant a league, more or less, provided your excellency declare and consider them as constructed on the granted tracts (sitios) in question, until the time arrives when the country is pacified; that, in view of what I have stated, and of the fact that they wish to begin work in the coming month of February, your excellency will be pleased to give me a reply stating whether any improvement (finca) whatever made on the commons (ejidos) will avail them as being constructed on the lands granted, for the reason to which I refer, and, in case of not deserving this consideration, I desire you to have the kindness to tell me so both for the satisfaction of these inhabitants and that, in that event, they may proceed in the manner that seems best to them.

God and liberty. Santa Cruz, January 27, 1836.

PABLO FRAYJO. [RUBRIC.]

Mr. Treasurer-General Don JOSE MARIA MENDOZA.

Filed in the office of the clerk, Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk. By , deputy.

808 DEFENDANTS' EXH. 23.

[From testimony of Colin Cameron in Colin Cameron vs. The United States, 1887.]

"I simply placed the cattle on the land and employees to take care of them. I had no surveyor with me when I was riding around, but I immediately took one out, and with the expediente we located the grant before I bought it. He was a Government surveyor of the United States—a deputy—and I had the lines run, to know exactly what was there and where they were. J. B. McLaughlin, I think, was his name. He went at my expense only. I paid him for it myself. He was not sent there by the order of any person, but we went to locate the ground so that I myself would know where the lines were."

Filed in the office of the clerk, Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk. By , deputy.

809 DEFENDANTS' EXHIBIT 23A.

[From testimony of Mr. Ygnacio Bonillas in Wm. Faxon, trustee, et al., *v.* United States et al.]

Cross-examination by Mr. REYNOLDS:

Q. You say you went to school at San Ygnacio until you were twelve years old and then came here?

A. Yes, sir.

Q. How old were you when you went to college in the East?

A. I was twenty-two years old, about—twenty-one to twenty-two.

Q. In attending the schools of Tucson, you studied English there, didn't you?

A. Yes, sir.

Q. Then the only schooling you ever had in Spanish was during the time you went to school when you were twelve years old?

A. In San Ygnacio and Magdalena only.

Q. That is the only schooling you ever had in Spanish up to twelve?

A. Yes, sir.

Q. Now, you have stated you have surveyed a large number of land grants in Mexico. Were those principally surveyed in Sonora?

A. Yes, sir; in Sonora.

Q. Now, your surveys were made on behalf of the National Government, were they not?

A. Sometimes.

Q. Whenever the Government afterwards approved the title they were made on behalf of the Government?

A. Yes, sir. I was appointed by the district judge—Federal judge—having charge of those matters to make these surveys.

Q. You were appointed, then, in these instances for the purpose
810 of surveying land grants to find out how much land was included within the outboundaries of the grant or monuments over and above the amount included and sold by the title papers?

A. Sometimes for that purpose and sometimes for other purposes.

Q. That was one of the purposes in making these surveys?

A. Yes, sir.

Q. The Government was trying to find out how much land these parties were claiming over and above the grant?

A. No, sir; they were not trying to find out that.

Q. Were not trying to find out what the demasias were?

A. No, sir; the Government was not trying to find out anything. It was the owners that wanted their land surveyed and wanted to acquire the excessive lands they might have inside of the monuments, and they were petitioning the Government to grant it to them.

Q. The owners of the lands were claiming the lands lying within the outboundaries against the National Government over and above the amount called for in the title papers?

A. Yes, sir.

Q. Known as demasias?

A. Yes, sir.

Q. And you were surveying those. Now, the way you found the demasias, you took the title papers and found out how much land had been sold and was included within those title papers?

A. Yes, sir.

Q. And you then went to the monuments and surveyed them to the outer extremities?

A. Yes, sir.

811 Q. And found what that area was?

A. Yes, sir.

Q. And took the difference in the amount of land called for by the title papers and the total amount of land you surveyed, and the difference was the *demasias* which belonged to the Government?

A. Yes, sir.

Q. And which the party was denouncing and buying from the Government?

A. Yes, sir.

Q. And those were the titles that were afterwards approved and issued on your surveys?

A. Yes, sir.

Q. Approving at the same time the "cabida legal," the original amount sold?

A. Yes, sir.

Q. You found in a great many instances, didn't you, that the outboundaries of the grant contained more lands than was contained in the title papers, didn't you?

A. I have stated so.

Filed in the office of the clerk, Court of Private Land Claims, May 15, 1899. Jas. H. Reeder, clerk; by , deputy.

812 And be it further remembered that afterwards, to wit, on the 27th day of November, A. D. 1899, the court sitting at Tucson, Arizona, made the following order:

ALFRED A. GREEN *vs.* UNITED STATES ET AL. } No. 2, San Rafael de la Zanja grant.

This cause having been tried and submitted at a former session of the court, the court now, through the chief justice, announced its decision confirming the grant to the extent of four sitios of land, the same to be measured in a square from the center established by the Mexican surveyor who made the original survey.

Counsel for claimant was directed to prepare a decree accordingly.

(Minutes signed.)

JOSEPH R. REED, *Chief Justice.*

And be it further remembered that thereafter, to wit, on the 10th day of February, A. D. 1900, the same being the 58th day of the January

term, A. D. 1899, held at Tucson, the following decree was, by the court, ordered entered of record:

813 In the United States Court of Private Land Claims, sitting at Tucson, Arizona, January session, 1899.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, William C. Jones, Harvey L. Christie, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy, Ed Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustemante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Victor Hugo Igo, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sidney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vancuren, John Doe, James Doe (whose real names are to the plaintiff unknown) et al., defendants.

Case number two, San Rafael de la Zanja grant.

814 This cause having heretofore come on for hearing upon the pleadings and upon the evidence taken on behalf of plaintiff and defendants, the court after considering the evidence submitted in the cause hereby adjudges and decrees as follows, to wit:

I.

That a grant was made on the 15th day of May, 1825, by Juan Miguel Riesgo, commissary-general ad interim of the treasury, public credit and war, of the sovereign nation of the Mexican Republic, and in its name, to Don Ramon Ramero and coowners (parcioneros) of a tract of land known as the Rancho San Rafael de la Zanja, consisting of four square leagues of land, situated within the jurisdiction of the presidio of Santa Cruz, as more particularly hereinafter described.

II.

That the said grant was an auction sale of the said tract made by the senor intendente ad interim of the province of Sinora and Sinoloa to the

said grantees for the sum of twelve hundred dollars ($1200), which sum was paid therefor by the said grantees unto the principal ministers of the national treasury of the Mexican Republic.

III.

That said sale and grant were so made under and in pursuance of that certain law generally known as article 81 of the ordinances of intendencies of the 4th of December, 1786, and that other certain law known as the instructions of the 15th of October, 1754, and of the law of the Mexican Republic of September 21, 1824, and of the declaration known as the plan of Iguala, February 24, 1821, and of the law of the provisional council of the Mexican Republic of October 5, 1821, and of the law of said council of January 16, 1822, and of the law of said council of February 2, 1822, all of which laws are hereby referred to as being those under which said grant is confirmed. And reference is also hereby made to that certain treaty made between the United States and
815 the republic of Mexico on the 30th day of December, 1853, under which, as well as said laws before referred to, such confirmation is made.

IV.

That at the trial of this cause the petition herein and the answers of defendants Colin Cameron and Harvey L. Christie were sustained by legal and satisfactory proofs, and it was also shown that said grant and sale of the tract therein described constituted a valid title, lawfully and regularly derived from the Government of Mexico, and that the said title was perfect and complete at the date of the acquisition of the territory by the United States, and that said grant and sale to said grantees constitute such a valid title that the United States are bound upon the principles of public law and by the provisions of treaty of cession to respect it as a valid, complete, and perfect title at said date.

V.

That no part of the premises for which confirmation is made, as hereinafter described, has been disposed of by the United States.

VI.

That at said trial it was made to appear that every condition and requirement stated in said grant as incumbent upon said grantees to be performed was performed within the time and in the manner stated in said grant.

VII.

That the confirmation of the said grant herein decreed shall not confer any right or title to any gold, silver, or quicksilver mines or minerals contained in such lands, but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in any patent issued under this decree.

VIII.

That this confirmation is made subject to all of the limitations herein expressed, and subject to all the limitations and terms of the act of Congress of March 3, 1891.

816 IX.

That defendants Colin Cameron and Harvey L. Christie have acquired an interest in said lands hereinafter described by conveyances executed to them by the heirs at law of the original grantees hereinbefore named.

X.

Now, therefore, in consideration of the premises and by virtue of the power vested in this court by the provisions of the act of Congress approved March 3rd, 1891, confirmation is hereby made and decreed of the said title of the said Ramon Ramero and of his coowners and of their heirs, successors in interest, and assigns in and to so much of the said tract, San Rafael de la Zanja, as is situated in the county of Santa Cruz, Territory of Arizona, and is particularly described, located, and bounded as follows, to wit:

Four sitios, the same to be measured in a square from the center established by the Mexican surveyor, to wit, one league to each cardinal point from the center point shown on the map of a certain survey made in September, 1895, by Ignacio Bonillas and in evidence in this cause.

And the claim of plaintiff and defendants Colin Cameron and Harvey L. Christie to all other land not so confirmed is rejected.

Done in open court at Tucson, Arizona Territory, this 10th day of February, 1900.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

Recorded in Journal 1, pages 169, 170, & 171.

817 *Opinion of the court.*

ALFRED A. GREEN)
vs.)
THE UNITED STATES AND OTHERS.)

This is a petition for the confirmation of what is known as the San Rafael de la Zanja grant.

The action was brought by Alfred A. Green, who alleged that he was the owner of the claim. Cameron was made a party defendant. He answered, denying that Green had any interest in the property and alleged title in himself, but disclaiming any purpose to invoke the jurisdiction of the court for the confirmation of his title, which he alleged was complete and perfect at the date of the Gadsden treaty, under which the United States acquired jurisdiction over the territory in which the land is situated. Subsequently, however, he filed a pleading in the nature of a petition of intervention in which he pleaded the original grant and his ownership of the property, and prayed for the confirmation of the claim.

The United States answered both the original and intervening petition, denying the validity of the grant. The cause was tried on Cameron's petition of intervention and the answer thereto, Green not appearing in the trial. Frank J. Heney, Rochester Ford, and J. T. Morgan for claimant; Matt G. Reynolds and Wm. H. Pope for the Government, and W. H. Barnes for settlers.

REED, C. J.

The cause is founded on a proceeding initiated in 1821 and concluded in 1825. In its essential features it is like Ely's Administrator v. The United States, 171 U. S. The proceedings under which the grant was made are precisely like those upon which the grant in that case was made, and were had under the same laws, and the two grants were made by the same officer. The decision in that case is therefore conclusive of all questions relating to the regularity of the proceedings and the validity of the claim in this.

818 The questions argued by counsel related to (1) the extent of the grant, (2) its location, (3) whether the grant was recorded within the meaning of the Gadsden treaty, and (4) whether the intervenor Cameron is barred from prosecuting the action by the provisions of the act under which this court is constituted, his petition having been filed subsequent to the 3rd of March, 1893.

As to the first question, we hold that the transaction in question was a sale of the specific quantity of land named in the petition, in the proceedings of sale, and in the titulo or patent, viz, four sitios. With reference to this question the case is not distinguishable from the cases of Ely's Administrator v. The United States, Cameron v. The same, 171 U. S., and those of Perrin and Maish & Driscol (Babocomari and Buena Vista), just decided in this court, and we do not deem it necessary to add anything to what is said on the subject in those cases.

On the second question we hold that the grant was located within the meaning of the treaty of 1853. A central point for the survey was fixed, from which the surveyor reported that he run the lines to the cardinal points, forming a rectangle. True, his report shows that the lines run included a quantity much in excess of four sitios of land, but in our judgment that fact does not effect the question as to the location. The report shows that a square was formed with an established center, and under the holding of the cases cited above that was a sufficient location, it being necessary only to shorten the lines so that they will include the quantity of land actually petitioned for and sold.

It may be true that this holding is in conflict with the holding of this court and the Supreme Court in Ainsa vs. U. S., 151 U. S., 298, but if so, we are control'ed by the holding of the Supreme Court in the later cases.

It was not shown affirmatively that any memorandum or notation of the grant was entered in the Toma de Razon—and it was contended with reference to that question that such entry was necessary to con-

819 stitute a record of the grant, and that the fact of the entry must be affirmatively shown before there can be a confirmation of the claim.

It is proper to say in the outset that the entry in the Toma de Razon of a memorandum of the grant was not essential to the title of the grantee,

but was a mere ministerial duty imposed upon the officer issuing the titulo or patent.

As between the grantee and the Government the title was passed absolutely to the former by the titulo and could not be defeated by the failure of the officer to perform that duty. The duty to make the entry, as we have said, was an official duty, and courts will not lightly indulge the presumption that it was not performed, especially when such presumption would operate to defeat a valid title or right. They will presume rather that the officer performed his duty when that is necessary for the preservation of the title or right, and in the absence of any direct proof in this case we will indulge that presumption. But was the minute or entry in the book the record of the grant? We think not. It was a mere memorandum that a grant of so much land had been made to a named grantee, in a named district or locality, and that the price had been paid, and that the title had been given. It contained no recital which would enable any one to identify the particular land granted, or to determine any of the terms or conditions of the grant, and standing alone offered no evidence whatever of title. On the other hand, the expediente, which was preserved in the archives, contained the record of every act taken in the proceeding from its beginning to its conclussion. When the price at which the land was sold was paid into the treasury that fact was entered of record in the document and note of the issuance of the title was made upon it, and to it reference must be had for information as to every essential step of the proceeding.

If the word "recorded" were to be given its literal meaning it would follow that the Government of Mexico deliberately ceded to the other contracting Government all the real property belonging to its citizens and lying within the ceded territory, for to record is to transcribe into a book, and that never was done. The entry in the book, as we
820 have seen, was in no sense a record of the grant, which was evidenced by the titulo or patent, but was a mere memorandum with reference to the proceeding, and it seems to us impossible that it should have been the record contemplated by the contracting parties. It was against claims for land of which documentory evidence did not exist in the archives, many of which had been asserted in California, that the Government of the United States was seeking to protect itself.

And as the Government of Mexico had been careful to secure stipulations in the treaty for the preservation of all the property rights of its subjects in the ceded territory it is impossible to believe that it intended by the stipulation in question to make those rights dependent upon the fidelity with which public officers had performed their duty with reference to matters not at all essential to the rights of the citizens as against it.

We are of the opinion, therefore, that a grant was duly recorded within the meaning of the treaty, where an expediente was preserved in the proper archives showing the grant and the full proceeding upon which it was based.

We are also of the opinion that a judgment of confirmation can be entered upon the intervening petition of Cameron. The grant was complete and perfect at the date of the treaty and the statute creates no limitation as to the time within which an action for the confirmation of such a grant must be brought. The intervenor could have brought an

original action for the confirmation of the grant at the date when his petition was filed, and we know of no reason why he might not pursue the same remedy in the manner which he has pursued it.

A decree will be entered confirming the grant to the extent of four sitios, the same to be measured in a square from the center established by the Mexican surveyor who made the original survey.

MURRAY & FULLER, J. J., dissenting.

821 *Dissenting opinion of Justices Murray and Fuller.*

The grant in this case was made under the provisions of the cedula of 1805, and by its provisions only four sitios of land could be granted to any one individual, and a poor person only two. See Reynoldo Compa., p. 72.

The petition was for four sitios. Four sitios were appraised, advertised, sold, and granted. The expediente shows that 16 sitios were surveyed, and estimated, two hundred cords to each of the cardinal points from the center monument. The exterior boundaries, according to witness Bonillas's survey and map, contains about 160,000 acres. The court is asked to confirm the grant to that extent, or at least 16 sitios, the quantity surveyed. In my opinion the grant is not located, but as I have at the present term of court, in the Perrin case, discussed that question, I will only notice the second ground urged by the Government against the confirmation of the claim, to wit:

That the grant was not duly recorded in the archives of Mexico at the date of the Gadsden treaty. Under the provisions of the treaty valid grants made by Spain or Mexico prior to September 25, 1853, are not to be recognized by the United States unless they were located and duly recorded in the archives of Mexico. It will be noticed that the treaty provides that grants must be duly recorded, and not the history of the various steps taken under the provisions of the laws of Mexico necessary to authorize the granting officer to make the grant. Under the Mexican system for disposing of the public domain at the date of the grant in this case a petition was presented to the proper officer praying for a grant of the land mentioned in the petition. An investigation was ordered by the treasury-general, the purpose of which being to determine whether or not the land should be granted to the petitioner or petitioners. Upon the coming in of a satisfactory report, a survey and appraisement of the land was ordered. The law fixed the minimum price of the land per sitio. After this was done the land was advertised for 30 days and finally sold at public auction to the highest bidder. It frequently happened, as in this case, that other parties than the
822 petitioner became the purchasers at the sale. When all these preliminary steps had been taken, and the purchase money paid, the grant, which vested the title, was made and signed by the granting officer. When this was done, all the original papers, from the petition to the payment of the purchase money, were fastened together and remained in the archives of the treasury-general's office. A second original, or copy, with the grant attached, was given to the grantee, but before this was done the grant document was to be recorded in a book kept for that purpose, called the Toma de Razon. There was no other

book known to the laws or usages and customs of Mexico in which grants could be recorded. The original papers, constituting the matrix, was never recorded, nor the copies, or second original given to the grantee. Therefore it seems to me quite clear that the provisions of the treaty which provides that the United States shall be under no obligation to recognize grants made prior to Sept. 25th, 1853, which have not been located and duly recorded in the archives of Mexico, have reference alone to grant documents which under the laws, usages, and customs of Mexico could only be duly recorded in the book of Toma de Razon. It was the grant which vested title in the grantee, and when recorded gave notice to the public that the land granted was segregated from the public domain. The entire grant was not recorded as under our system of registration, but only a memorandum showing the date of the grant, to whom granted, the name of the granting officer, location, and number of sitios granted. A grant so recorded in the proper book was duly recorded within the meaning of the Gadsden treaty. I think this position is sustained by a number of decisions of the Supreme Court of the United States in the California cases under the treaty of 1848. See Fuentes vs. U. S., 22 How., 443; Parallan case, 3 Wall., 434; Lucus case, 23 How., 515; Bolton's case, 23 How., 347; Vallego's case, 1 Black, 541; U. S. vs. Sutten, 21 How., 175; Knight, adms., 1 Black, 228; Neleigh's case, 1 Black, 298; Romero's case, 1 Wall., 743; White's case, 1 Wall., 660; Berreyesca case, Lawyer's Coop. ed., 912.

It has not been shown that the grant in this case was duly
823 recorded in the archives of Mexico, and this court has no power to confirm it. There is the following entry at the end of the titulo: "Entry of this title is made at folio 3 of book No. 2 that exists in this commissariat-general." When this entry was made or by whom does not appear. This affords no evidence that the grant was ever duly recorded. Two books of Toma de Razon were in evidence on the trial, but there is no entry of this grant in either.

The claim should be rejected and the petition dismissed.

WILLIAM W. MURRAY,
Associate Justice.

I am authorized to say that Mr. Justice Fuller concurs in this opinion.

824 In the United States Court of Private Land Claims, sitting at Tucson, Arizona, January session, 1899.

ALFRED A. GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. RICHARDSON, Colin Cameron, William C. Jones, Harvey L. Christie, Antonio de la Osa, Carleton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy, Ed Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustamante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, Victor Hugo Igo, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sydney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vancuren, John Doe, James Doe (whose real names are to plaintiff unknown), et al., defendants.

Case number two, San Rafael de la Zanja grant.

825 The above-named defendants, Harvey L. Christie and Colin Cameron, conceiving themselves aggrieved by the order and judgment entered on February 10, 1900, in the above-entitled cause, pray that an order of severance be entered herein, and that they be allowed to appeal separately from the plaintiff and all the other defendants herein, and do hereby appeal from said order and judgment to the Supreme Court of the United States, and pray that this, their appeal, may be allowed, returnable sixty days from the date thereof, and that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States.

ROCHESTER FORD,
Attorney for Harvey L. Christie.
FRANCIS J. HENEY,
Attorney for Colin Cameron.

TUCSON, ARIZONA TERRITORY, *March 6, 1900.*

And now, to wit, on 12 M'ch, 1900, it is ordered that the order of severance and appeal be allowed as prayed for.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

Due and legal service of copy of the foregoing application for an appeal and allowance thereof is hereby acknowledged at Santa Fe, New Mexico, this 13 day of M'rch, 1900.

MATT. G. REYNOLDS,
U. S. Attorney, Court of Private Land Claims.
W. H. BARNES,
BARNES & MARTIN,
Attorney for Certain Defendants.

Filed in the office of the clerk, Court of Private Land Claims, March 26, 1900. Jas. H. Reeder, clerk. By R. L. Long, deputy.

826 In the United States Court of Private Land Claims, sitting at Tucson, Arizona, January session, 1899.

HARVEY L. CHRISTIE AND COLIN CAMERON, defendants and appellants,
vs.
THE UNITED STATES, RESPONDENT.
} Case No. 2, San Rafael de la Zanja grant.

UNITED STATES OF AMERICA, ss:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, district of Arizona, wherein Harvey L. Christie, and Colin Cameron are appellants and the United States of America are respondent, to show cause if any there be, why the judgment rendered against the said appellants in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 12th day of March, 1900.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

Due and legal service of the foregoing citation is hereby acknowledged this 13th day of March, 1900.

MATT. G. REYNOLDS,
U. S. Attorney Court of Private Land Claims.

W. H. BARNES and
BARNES & MORTON,
Attorney for Certain Appellants.

827 (Indorsed:) Case No. 2. In the U. S. Court of Private Land Claims. Harvey L. Christie et al., appellants, *vs.* The United States. San Rafael de la Zanja grant. Citation. Filed in the office of the clerk Court of Private Land Claims, Mar. 26, 1900. Jas. H. Reeder, clerk; By R. L. Long, deputy.

828 *Appeal and allowance.*

United States of America, ss. Court of Private Land Claims, Arizona district.

ALFRED A GREEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, R. R. Richardson, Colin Cameron, William C. Jones, Harvey L. Christie, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Stienfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy, Ed. Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustamante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Victor Hugo Igo, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sidney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vancuren, John Doe, James Doe (whose real names are to the plaintiff unknown), defendants. } No. 2, San Rafael de la Zanja grant.

The above-named defendant, The United States, considering itself aggrieved by the decree entered on the 10th day of February, A. D. 1900, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

And now, to wit, on the 2 day of July, A. D. 1900, *1900*, it is ordered that the appeal be allowed as prayed for.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

Filed in the office of the clerk Court of Private Land Claims, Jul' 5, 1900. Jas. H. Reeder, clerk. By R. L. Long, dep.

829 *Citation on appeal to the Supreme Court.*

UNITED STATES OF AMERICA.

The President of the United States, to A. A. Green, R. R. Richardson, Colin Cameron, William C. Jones, Harvey L. Christie, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frark Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Scheehy, Dave Sheehy, Ed. Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustamante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Victor Hugo Igo, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sidney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vancuren, John Doe, James Doe (whose real names are to the plaintiff unknown), and Warren Allison, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington, to wit, sixty days from and after the date of this citation, pursuant to an appeal this day taken by the United States of America and filed in the office of the clerk of the Court of Private Land Claims in the case of Alfred A. Green, plaintiff, vs. The United States of America, R. R. Richardson, Colin Cameron, William C. Jones, Harvey L. Christie, Antonio de la Osa, Carlton B. Kelton, Julius Kunde, Francisco Samora, G. W. Crowe, James Bennet, Jesse Bland, Geo. McCarty, Frank Hereford, Albert Steinfeld, A. J. Stockton, Charles Murray, Patsey Sheehy, Jeremiah Sheehy, Dan Sheehy Ed. Sheehy, Johanna Sheehy, Kate Sheehy, Mary Sheehy, Nellie Sheehy, David Allen, Frank M. Allison, Warren Allison, G. B. W. Gardner, Nicholas Bersich, Herbert Brown, Ignatius Burgoon, Jesus Bustamante, D. G. Chalmers, Richard Chapin, W. C. Davis, C. T. Dunavan, Richard Farrell, James Finley, John Connor Glissan, Victor Hugo Igo, Watkins Gittens, William Gittens, Henry Harmon, Charles F. Harrison, R. N. Leatherwood, William E. Leek, James McCarty, Neil A. McDonald, Jeremiah Neville, Eben L. Oakes, F. A. Odermatt, Frederick Olsen, Sidney L. Park, James Parker, William Parker, Frank Powers, James A. Rice, Thomas L. Rice, Willis M. Roberts, S. Silverberg, Ahira B. Sorrells, H. B. Tenney, Elihu P. Vancuren, John Doe, James Doe (whose names are to the plaintiff unknown), defendants, to show cause, if any there by, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand nine hundred.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

I hereby acknowledge service of the foregoing citation this 6th day of July, A. D. 1900.

ROCHESTER FORD,
Attorney for Colin Cameron and Harvey L. Christie.
BARNES & MARTIN,
Attorney for other Codefendants.
FRANK H. HEREFORD,
Attorney for self and J. B. W. Gardiner.

Filed July 7, 1900. Jas. H. Reeder, clerk. By R. L. Long, dep.

830 *Certificate of the clerk.*

UNITED STATES OF AMERICA, *Territory of Arizona:*

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing is a full, true, and correct transcript of the record of the proceedings, pleadings, testimony and exhibits, judgment, opinions, orders allowing appeal, and citations in the case entitled: Alfred A. Green against the United States, Colin Cameron, Harvey L. Christie, et al. (No. 2, San Rafael de la Zanja grant), as the same appears of record in my office, except plaintiff's exhibits marked F 58, F 63, and F 81; also defendants' exhibit marked "Plaintiff's Exhibit No. 17," for the reason that said exhibits were not filed in my office.

Given under my hand and the seal of said court, at Tucson, A. T., this tenth day of July, A. D. 1900.

[SEAL]

JAMES H. REEDER, *Clerk,*
By R. L. LONG, *Deputy.*

831 (Indorsement on cover:) File No. 17,836. Court of Private Land Claims. Term No. 351. The United States, appellant, vs. A. A. Green, R. R. Richardson, Colin Cameron, William C. Jones, et al., filed July 19, 1900. File No. 17,864. Term No. 379. Harvey L. Christie and Colin Cameron, appellants, vs. The United States. Filed August 6th, 1900.

O

No. 109 & 129

Supreme Court U.S.
FILED
JAN 27 1903
Clerk.

Brf. of Atty. Gen. (Mr. Richards,
Reynolds & Pope) for U. S.

In the Supreme Court of the United States.

Filed Jan. 27, 1902.

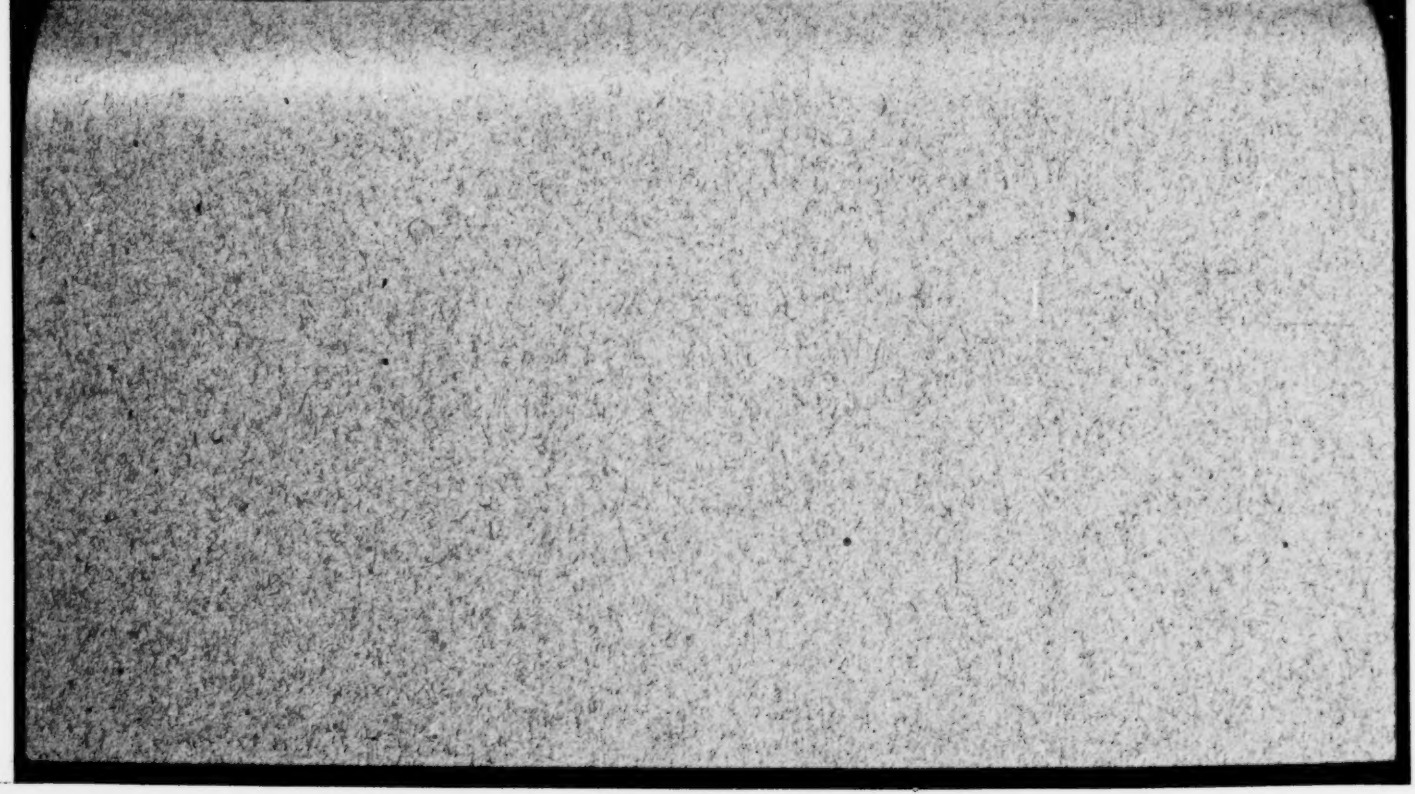
OCTOBER TERM, 1902.

UNITED STATES, APPELLANT, *v.* A. A. GREEN ET AL.	No. 109.
HARVEY L. CHRISTIE AND COLIN CAMERON *v.* UNITED STATES.	No. 129.

SAN RAFAEL DE LA ZANJA GRANT IN ARIZONA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.



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OCTOBER TERM, 1901.

UNITED STATES, APPELLANT, *v.* A. A. GREEN, R. R. RICHARDSON, COLIN Cameron, et al.	No. 109.
HARVEY L. CHRISTIE AND COLIN CAMERON, appellants, *v.* UNITED STATES.	No. 129.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT ON THE PLEADINGS.

On the 27th day of February, A. D. 1893, Alfred A. Green filed a petition for the confirmation of the San Rafael de la Zanja grant, situate in the county of Pima, Territory of Arizona, and alleged to have been made on the 15th day of May, A. D. 1825, and described as a tract having its center at a place called San Rafael; running thence northerly 200 cords, or 2 leagues, to an oak tree marked with a cross cut thereon and a stone monument at the tree; thence easterly 200

cords, or 2 leagues, to the northeasterly corner, marked by a heap of stones; thence southerly 400 cords, or 4 leagues; thence westerly 400 cords, or 4 leagues, to the southwesterly corner, being two little hills at the pass of San Antonio; thence northerly 400 cords, or 4 leagues, to a point on the Plumosa Mountain; thence easterly 200 cords, or 2 leagues, to the place of beginning. In his petition Green claims to have become invested with the legal title of the grant, and alleges that a petition for the confirmation of it was filed with the surveyor-general of Arizona pursuant to the act of July 22, 1854. This petition alleges the grant to be 16 square leagues in quantity and names a number of persons as claiming adversely to the petitioner, among them Colin Cameron, all of whom are made parties defendant to the petition (R., 1, 2).

On February 27, 1894, the United States filed its answer denying the allegations of the petition (R., 3).

On March 25, 1895, defendant, Colin Cameron, for the first time appeared in the cause, and thereupon filed a separate answer denying that plaintiff, Green, had any right, title, or interest in or to the grant for which he prays a confirmation, and averred that on the contrary he (Cameron) was the owner in fee, holder, and possessor of that tract of land, holding the same under and by virtue of a grant title dated May 15, 1825, made and executed by Juan Miguel Riesgo, commissary-general of the State of the West, in the name of the sovereign nation of the Mexican Republic. This answer further alleges that the purchase price of said grant was $1,297, 6 reals, and 5 grains,

for which amount the grant in question was on January 10, 1822, sold and conveyed in fee to one Ramon Romero and other citizens of the presidio of Santa Cruz.

That the proceedings resulting in the issuance of said title were instituted on July 19, 1821, addressed to Brigadier Antonio Cordero, governor intendants of Sonora and Sinaloa, the proper officer in charge of such matters, and that proceedings of survey, valuation, and publication were taken as required by the instructions and laws of the royal ordinances of intendants of December 4, 1786, which instructions and ordinances defendant avers were continued in force by the Mexican Republic without any change whatever in them; and that on January 10, 1822, the tract petitioned for and as surveyed according to the calls of the *expediente* thereof were sold by the officers of the Mexican Republic to Ramon Romero and other citizens of the presidio of Santa Cruz for the sum aforesaid, which amount, it is alleged, was thereupon, on January 11, 1822, paid by the said grantees into the national treasury of the Mexican Republic; that the said sale was on said last-named date approved by the provisional *junta* of the national treasury, and on the same day was referred to the supreme *junta* of royal hacienda for its approval; that before it could be approved the said supreme *junta* of royal hacienda was abolished, and no further proceedings were taken thereon until May 15, 1825, when Juan Miguel Riesgo, commissary-general of the State of the West, acting for and by authority of and in the name of the sovereign nation

of the Mexican Republic, issued to said grantees the final *testimonio* or evidence of title of said grant, and the same was thereupon duly recorded on folio 3 of book No. 2 of the records of grants or sales of lands for said year 1825.

That under the provisions of the act of Congress approved July 22, 1854, the successors in interest of said original grantees filed on February 28, 1880, in the office of the United States surveyor-general for the Territory of Arizona, their petition asking for the confirmation of said grant. Thereupon said surveyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general reported that the original title papers of said grant were genuine, and the latter recommended a confirmation of said grant to the legal representatives of the original grantees to the extent of four *sitios*, and no more, to be so located as to include the initial or center point of the original survey, but that no action was taken thereon by Congress or by any authorities of the United States, except as above stated; that the original grant documents were retained in the possession and custody of said United States surveyor-general, and that said grant is, and at the date of the execution of the treaty known as the Gadsden treaty was, located and duly recorded in the archives of Mexico; that the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and so were and continued to be at the time of the Gadsden

treaty, and that defendant Cameron owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by said original grantees and their grantees, said conveyances being on file in the office of the county recorder of Pima County, Ariz.; that the lands claimed by defendant are all the lands embraced within the original survey of said grant and the boundaries established and described therein and as indicated upon a certain map filed with defendant's answer as Exhibit A, said map being the Roskruge survey, appearing in the record as defendant's Exhibit F–52, at page 427.

Defendant further sets up that on September 6, 1886, the United States of America, one of the defendants herein, brought suit against him (Cameron) in the district court of the Territory of Arizona, under the act of Congress approved February 25, 1885, alleging that defendant had inclosed a large tract of public land belonging to the United States of America, subject to entry at the proper land office under the laws of the United States in such cases made and provided; that the lands so inclosed were in the first judicial district of the Territory of Arizona, the complaint alleging that defendant had inclosed as aforesaid 800 acres of public land without any title or claim or color of title acquired in good faith thereto, and without having first made application to acquire title thereto, or to any part thereof, according to law; that in that proceeding defendant Cameron answered and set up his title under said grant of May 15, 1825, made to said Ramon

Romero and others, and known and described as the Rancho San Rafael de la Zanja, with boundaries as set forth in said grant and as delineated in said Exhibit F-52; and defendant further alleged in his said answer in said case that he was the owner of said land grant, and that the inclosure referred to in the complaint therein was within the original boundaries of said grant as the same was surveyed by the Mexican authorities.

Defendant further alleges that said cause was thereupon tried by the court, sitting without a jury, and evidence was therein introduced as to the ownership by this defendant of said grant and of the location of said inclosure, and of the location of each monument described in the *testimonio* of said grant, and findings of facts were thereupon made in said cause, and it was in said cause found and adjudged that this defendant had succeeded to all of the right, title, and interest which Ramon Romero ever had in or to said grant, and had all such right, title, and interest of said Romero in said grant; and it was furthermore found and adjudged in said cause that the fence maintained by said defendant, Cameron, was within the exterior boundaries of said grant, as said boundaries were recited as measured in the *expediente*, or title paper of said grant, being a mile and a quarter south of the northern boundary, and 4 miles west of the east boundary of land recited as measured in said title; and it was further found and adjudged in said cause that the map attached as Exhibit A (being Exhibit F–52 in the present record) is a correct representation of the land included within the boundaries described in the original title

paper of said grant, and that said map correctly represents the location of each monument called for and described in said title paper.

Defendant Cameron by his said answer pleads such findings of fact establishing the monuments and location of said San Rafael de la Zanja grant as *res judicata.*

Defendant Cameron, concluding his said answer, avers that he in no wise invokes the jurisdiction of the court, or submits himself to it voluntarily, and that he answers herein only because he has been made a party defendant (R., 8); and while alleging said grant to have been perfect and complete when the United States acquired sovereignty over such lands, and to be a complete definitive grant in fee by way of sale, he avers that he is in no wise bound by the act of Congress establishing the Court of Private Land Claims to apply to said court for a confirmation of said title, and that he is *unwilling to submit himself to the conditions, or any of them, imposed by the act establishing this court upon petitioners applying to said court for confirmation of their title, and that he does not by this answer, or in any other way, so apply.*

On February 4, A. D. 1899, said defendant Cameron filed an additional answer, which differs from that just set forth in that the same omits the above-mentioned plea of *res judicata*, and includes the following additional allegations (R., 11, 12):

> That said grant was not a grant by quantity, but was a sale by the metes and bounds and natural landmarks established by the said sur-

vey thereof made by the Spanish officials prior to the issuance of the same, and that it vested in the grantees a perfect and valid title in fee to the whole of said tract so surveyed.

Defendant further avers that prior to said treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by anyone, and that none of the grantees or their successors in interest had, prior to said treaty, any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers; and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised: and defendant further avers that if this honorable court should decide that said sale, as recited in said title papers, did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due is ascertained.

Wherefore defendant now tenders to the United States of America, and offers to deposit with the clerk of this honorable court, for the United States of America, the sum of $1,349 in gold coin of the United States of America, as payment for all such overplus of said lands in said grant, according to their quality and the price which governed when it was surveyed and appraised, and the further sum of $200 in like coin for the costs of ascertaining and determining the existence or nonexistence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender; and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for any such overplus or surplus, and prays that upon said payment this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the ownership and possession of the whole of said tract; and defendant answering herein by reason of the fact that he has been made a party defendant, prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be, and always to have been, a complete and perfect and unconditional title in fee, and the defendant be adjudged to be the owner in fee thereof; and for such other and further relief as to the court may seem meet and proper in the premises.

On May 19, 1899 (R., 88), defendant Cameron filed a supplemental answer, setting up the plea of *res judicata*, above referred to.

On February 4, 1899, Harvey L. Christie (R., 13–17) filed his separate answer, setting forth precisely the same allegations contained in Cameron's separate answer above mentioned.

It will be noted from the pleadings above referred to that up to February 4, 1899, none of the parties to the record, except Green, had filed in the court any pleading asking affirmative relief or a confirmation of their grant, the original answer of Cameron, as above shown, expressly disclaiming any desire to invoke the jurisdiction of the court or to secure from it a confirmation of the title relied upon.

On March 10, 1893, Frank H. Hereford and J. B. W. Gardiner (R., 83), who were codefendants with the United States, filed their answer, denying the allegations of the cross-petitions of Cameron and Christie, setting up ownership of a certain mine known as the Empire mine, under patent of the United States bearing date February 17, 1877, and alleging continuous possession of said mine for over twenty years previous to filing of answer.

On March 10, 1899, F. L. Bartlett, another codefendant, filed a similar answer, setting up ownership of the Holland mine and adverse possession thereof for over twenty years. (R., 85.)

On May 12, 1899, V. H. Igo, one of the codefendants, filed his answer (R., 86), alleging that about the

year 1880 he took up as unsurveyed public land of the United States a ranch near a large spring known as the Carricito Spring, being the spring within and near the northeast corner of claimants' survey; and that he had expended thereon over $20,000 in improvements; and upon the basis of this he prays that his rights in and to said land may be adjudged to be superior to the rights of the grant claimants. He further alleges (R., 87) that if the grant is adjudged to be valid, he is the owner of an undivided one-half of the same by reason of having purchased the interest of two of the four heirs of one Ramon Romero, the only purchaser whose name is given in the grant proceedings.

On May 13, 1899, the heirs at law and children of John J. Sheehy and Katherine Sheehy, also codefendants, filed their answer (R., 87), alleging that in the year 1879 the said John and Katherine Sheehy made a location in what is known as the San Rafael Valley of a tract of land about 3 miles north of the international line, said settlement having been made on the premises in the belief that the same was unsurveyed public lands of the United States; that extensive improvements were and have been made thereon; that at the time of such settlement there was no one there occupying or claiming to occupy said place upon which they located or any other place, claiming to do so by virtue of the Mexican land claim San Rafael de la Zanja; that there were no boundaries of said grant designated upon the ground, no monuments in view, and nothing to indicate the location of any grant; that

in the latter part of the year 1883 the said John J. Sheehy, upon being informed that there was a pretended Mexican grant covering said land, purchased for a valuable consideration, from one Juan Salgado, the sole heir of Thaddeus Salgado, one of the original coparceners of the grant, all of his right and title therein, amounting to three-fortieths of the grant; and said defendants pray that if the grant be valid for any purpose or to any extent they be declared to be the owners of said undivided three-fortieths (R., 88).

TRIAL OF CAUSE, AND TENDER.

The cause came on for hearing before the court, upon the pleadings just outlined, on February 4, 1899. (R., 18.) There was no appearance for the plaintiff, A. A. Green, and the cause proceeded to trial on the cross complaints filed by Cameron and Christie, which were treated by the court as petitions for affirmative relief against the United States.

At said time (R., 18) there was tendered, in open court, on behalf of said defendants, Harvey L. Christie and Colin Cameron, the sum of $1,359 in American gold coin for the *demasias* included in the outboundaries of this grant, as claimed by said defendants, and also the further sum of $200 in American gold coin to defray the further expenses of the survey of such *demasias*, these tenders being made pursuant to the allegations of the answers of said Christie and said Cameron.

There was tendered in evidence on behalf of said two defendants a certified copy of the *expediente* of the San Rafael de la Zanja grant, as Exhibit F-1 (R., 18, 33). The translation of the *expediente* was apparently omitted from the record, and is accordingly attached as Appendix 1 to this brief.

There was also tendered in evidence on behalf of the same defendants, the original title to the San Rafael de la Zanja grant, dated May 15, 1825, which was marked Exhibit F 2 (R., 18, 46), a translation of which appears in the record at page 525.

This *titulo* shows the following as the original proceedings upon which this title is based:

On the 19th day of July, 1821, Don Manuel Bustillo, a resident of the presidio of Santa Cruz, applied to the intendant of the province of Sonora and Sinaloa, Antonio Cordero, at Arispe, for 4 sitios of land at a place to which he afterwards gave the name of San Rafael de la Zanja. Three of these sitios were to be north of and adjoining the lands of said presidio, and the other at the place called Cajoncito to the east.

The application was granted on the same day without prejudice to third parties, and the commandant of Santa Cruz was ordered to make the survey, appraisement, and publication of the land for thirty consecutive days in solicitation of bidders.

Capt. Simon Elias Gonzales, commandant of Santa Cruz, accepted the commission October 4, 1821, and ordered the survey to be commenced on the next day,

after summoning the party in interest and the owners of coterminous lands.

It is stated the owners of coterminous lands were summoned, assistant appointed, and the survey made on the 5th and 6th of October, 1821, after the land had been previously reconnoitered.

After a waxed and twisted hempen cord of 50 varas had been measured, the applicant (Bustillo) requested that, inasmuch as the place called Cajoncito was inside of the presidio lands, the one sitio he had asked for there be given to him in one tract with the other three, which request was granted.

From the center point located by the applicant, with the name of San Rafael, there were measured north 200 cords, terminating on a table-land (mesa), on the edge of a creek that runs toward the Peñasco, at the foot of an oak tree, on which a cross was cut and at the foot of which a pile of stones was put to mark the place for the monument.

From the same center 200 cords were measured south to the north center monument of the Presidio lands, at the mouth of the Potrero Canyon.

From the same center 200 cords were measured east, crossing the Potrero Canyon and terminating on a table-land contiguous to said canyon. A large pile of stone was put to mark the place for the monument.

From the same center 133 cords were measured west and 67 estimated in the same direction to the summit of a high hill (cerro) in the Plomosa range of mountains, which is almost southwest from a small hill

(cerrito) known as the Caloso. The summit was marked for a monument.

On the 6th of October, 1821, the side lines were measured, parallel, respectively, to the two lines just described. Beginning at the north center monument, at the tree with the cross, 200 cords were *estimated* east to the point of the Cobre Mountains, above the Carricillo spring, where the northeast corner monument was placed.

From the same point—tree with a cross—200 cords were *estimated* west to the foot of a red hill (cerro) visible through the opening between the Peñasco and the Sonoita mountains, and which serves as a monument, being the northwest corner.

From the northwest corner 400 cords were *estimated* south along the Plomosa Mountains to a point beyond the San Antonio Pass on two small hills (cerritos), the northwest corner of the Presidio lands and the southwest corner of these 4 sitios.

Thence east there were measured 200 cords to the north center monument of the Presidio lands, the south center of the grant.

Thence continuing east, 200 cords were measured to the northeast corner of the Presidio lands on the Jaralito, the southeast corner of the grant.

Thence north 400 cords were *estimated* to the northeast corner already described.

It is stated that the foregoing survey covered "*the 4 sitios registered by Don Manuel Bustillo*," who was cautioned to build monuments of stone and mortar.

Appraisers were appointed and the 4 sitios appraised as follows:

Three sitios, at $60, because they have permanent water	$180
One sitio, at $30, because it was dry	30
For the 4 sitios	210

Publication was then made for thirty consecutive days soliciting bidders. None appeared.

Affidavits of three persons were taken to show that Bustillos had sufficient stock to stock the four sitios.

The expediente was then forwarded to the intendant, who, on December 11, 1821, referred it to the attorney-general for his opinion.

The attorney-general submitted a written opinion December 20, 1821, approving the proceedings and recommending that the three usual public offers be made and the land sold to the highest bidder upon payment of the price and the usual fees.

The intendant approved the recommendation of the attorney-general and ordered the three public offers made.

The first offer was made January 8, 1822. Don Ramon Romero "appeared for himself, and in the name of the other residents of the Presidio of Santa Cruz," and bid $10 over the bid of Manuel Bustillo. Bids and counter bids were made until Ramon Romero bid $1,200. Offers were made on the 9th and 10th, but no higher bid was made and the "4 sitios of land comprising the place of San Rafael de la Zanja were sold to Don Ramon Romero and the other residents of Santa Cruz."

Romero was notified of the result, with which he expressed satisfaction, and asked that the grant be made.

On January 11, 1822, the intendant, Ignacio de Bustamante, approved all the proceedings and ordered Romero to be notified and to pay into the treasury the price of the land and the usual fees, and, as soon as that was done and a voucher for the payment was aggregated to the expediente, it be sent to the superior board of the treasury in Mexico for such action as it might see fit to take.

Romero made the payment, and a certificate was given him January 11, 1822, for $1,297, 6 reals, 5 grains, being $1,200 purchase price and certain costs, among them $70, 6 reals, 5 grains, for the half annate tax and *18 per cent thereof for its transmittal to Spain.*

At this point the proceedings were suspended and so remained until May 15, 1825, three years four months and four days after, when the recently created commissary-general, Juan Miguel Riesgo, issued a title to "Don Ramon Romero and the other residents in interest" for "the four sitios of land for breeding cattle, comprising the place called San Rafael de la Zanja," under article 81, ordinance of intendants, and the royal instructions of October 15, 1754, at Fuerte, the then capital of the united states of Sonora and Sinaloa.

There is an entry at the end of the title (by whom made does not appear) that *toma de razon* of this title was made at folio 3 of book No. 2 in the commissariat general.

At said hearing defendants, Cameron and Christie, introduced in evidence a number of deeds from parties

claiming an interest in the grant to Alfred A. Green, being Exhibits F–3 to F–10 (R., 52–64). These deeds, in connection with the oral evidence (R., 91) and other deeds subsequently introduced, being Exhibits F–11 to F-51, inclusive (R., 385–423), F–54 to F–57 (R., 431–440), F–75 to F–77 (R., 462–464), and F–80 (R., 466), show that any title acquired by Alfred A. Green had, prior to the filing of the petition by Green, become vested in other parties, among them Cameron and Christie; that Green at the date of the filing of the suit had no title, having, as just stated, alienated all that he had acquired, and finally that said Cameron and Christie on the trial of the case showed sufficient interest in the subject-matter of the suit to invoke the jurisdiction of the court.

At said hearing the testimony of Ignacio Bonillas was taken to the effect that he had examined the records in the office of the treasurer-general of the State of Sonora, at Hermosillo, Sonora, Mexico, and had found among those records an expediente purporting to be the expediente of the San Rafael de la Zanja grant. He further testified that it was his recollection that there was not in the office of the treasurer-general "book No. 2" of *toma de razon*, the book in which it is alleged *toma de razon* of the issuance of this title was made.

It being made to appear to the court that certain parties, properly defendants under the land court act, had not been made defendants by the petitioners, the case was adjourned from February 6, 1899, to May 16, 1899 (R., 20), when its hearing was resumed and

finally concluded on May 31, 1899, when the cause was submitted (R., 90).

Under stipulation between the parties, on February 9, 1899, the testimony of ANGEL ELIAS, a resident of Fronteras, Sonora, Mexico, was taken and used on the trial of the cause. Mr. Elias testified (R., 20) that he was 60 years of age, and had been a soldier under the Government of Mexico as early as 1850, having been in 1853, at the apparent age of 14 years, commander of a company at Santa Cruz, and corporal of the *esquadra* in the army in 1850, at the age of 11 years (R., 21). He testified that during the time from 1850 to 1854 he was continually passing over the country between Tucson and Santa Cruz in the performance of his military duties, which was principally the pursuit of the Apache Indians, and during such service had occasion to pass through Sonoita, Babocomori, and San Pedro, and also the San Rafael de la Zanja country all of which are *loci* of grants now or heretofore pending before this court; that said places were uninhabited during that time on account of the Indians, there being only a few cattle and horses upon them, and that the place of San Rafael de la Zanja (R., 23) was abandoned on account of the war with the Indians, it not being possible to live there: that at that time there were some four hundred or five hundred people living at Santa Cruz, which is at present a populous village some 10 or 12 miles south of the grant here in controversy: that at that time there were signs of occupation of the San Rafael de la Zanja grant, temporary farms, small corrals and houses, both in good

condition and in ruins (R., 24); and that in the very vicinity of these houses, in 1854 or 1855, some of the settlers were killed.

Mr. Elias, on the subject of boundaries of the San Rafael de la Zanja grant, testified as follows (R., 29):

> Q. Did anybody ever point out to you what was called the north-center monument of the Pueblo of Santa Cruz?
>
> A. No; I only knew how far the land of the people of Santa Cruz extended according to the statements of the old people.
>
> Q. Where did they say it extended to?
>
> A. *Up to the place called Puerto del Canelo.*
>
> Q. Did you know the San Rafael de la Zanja grant in those days?
>
> A. Yes, sir; ever since I came to this frontier I knew it from the old people and from the neighbors.
>
> Q. Where was that from Santa Cruz?
>
> A. From the Santa Cruz it was *toward the upper part where the water—head streams—coming to Santa Cruz are.*
>
> Q. Who owned that grant?
>
> A. As I have said before, I understood that the owner of all that tract was all of the inhabitants of Santa Cruz; they bought their title.
>
> * * * * *
>
> Q. Where did they tell you the boundaries of the San Rafael de la Zanja were, if at all?
>
> A. They told me *the boundary line was at the Puerto del Canelo, sloping toward the Babacomori,* but except this they did not tell me where they were.

The relevancy of this testimony as bearing on the north boundary of this grant will become more apparent hereinafter.

Concepcion Elias, sworn on behalf of plaintiffs, testified that he lived at Santa Cruz, and was 60 years old; that he knew the children of Ramon Romero, the party who acted for the coparceners of Santa Cruz for the property now in controversy and the only one of said coparceners named in the title, and that he had three sons, Pedro, Francisco, and Encente (apparently Inocencio), and two daughters, Dolores and Juana, but that witness was not related to the family.

The evident purpose of this testimony was to show connection between the grantors in the deeds to Mr. Green and the family of Ramon Romero.

Elias also testified to the fact that Juan José Maria Montoya, Juan Alejandro Apodaca, Juan Jesus Dominguez, and Javier Dominguez, all of whom testified before the surveyor-general in behalf of claimants, were dead, thus paving the way for the introduction of their testimony under section five of the act establishing the Court of Private Land Claims.

Will M. Tipton, special agent of the Department of Justice, being sworn on behalf of plaintiffs (R., 91), testified that he had made an examination of the archives and records in the office of the treasurer-general in State of Sonora, at Hermosillo, and that he had found there only two books of *toma de razon*, one of them a very small book, not over a dozen leaves in it, and dated about 1824 or 1825, and the other a much

larger book that covered a long period of years, beginning some time in the thirtys and running up into the fortys (R., 92). Further describing said books (R., 233), he testified that the first of these did not exceed 6 or 7 inches in length, perhaps even less, and less than that in width, and consisted of twelve leaves at the time he first saw it (which was two or three years before the trial of the cause), five of which contained writing and five of which were blank. On the first page of the first leaf was the number 1 on it, and some title designating its contents or the purpose for which it was intended. The second book contained nearly 90 pages, with entries running from 1831 to 1849, said book having no indorsement or number on it; that there was no book in the archives containing an indorsement showing it to be book No. 2; that the last entry in book No. 1 is dated May 13, 1825, with a number of blank leaves following this entry, and that the first entry in the larger book was October 24, 1831, and that upon an examination of the contents of these two books no *toma de razon* of the *titulo* of the San Rafael de la Zanja was to be found, but that in the archives the original matrix or *expediente* of the San Rafael de la Zanja grant was found (R., 234).

Ignacio Bonillas (R., 92), called for plaintiffs, testified on the same subject: that he found two books of *toma de razon* in the archives, one of them marked on the outside of the cover with a figure 1, and the other being a large book with a sheepskin cover, and that witness did not remember anything about the indorsement thereon.

Further testifying (R., 95), Mr. Bonillas stated that he was 41 years of age, a native of the State of Sonora, and educated in both English and Spanish, having taken a course in mining engineering, mining and surveying at the Massachusetts Institute of Technology in Boston; that he had been engaged in mining for fifteen years, both in Sonora and Arizona, and had had considerable experience in translating Spanish documents, this experience dating back as far as the year 1875, being accompanied by the teaching of Spanish to English-speaking people; that he had held a number of offices in the Republic of Mexico requiring familiarity with the laws of that country and of the State of Sonora; and that he had been engaged in surveying land grants in that State almost constantly for fifteen years, having surveyed nearly 100 grants in Sonora and about 7 in Arizona (R., 96).

Testifying to these primitive surveys, Mr. Bonillas stated that the discrepancy existing within his observation between the course named in the title papers and that actually found on the ground varied from a few minutes to 60 or 70 degrees; and as to distances he had found them almost invariably much greater than those called for in the title papers; that in the location of perhaps a thousand monuments and natural objects under title papers he did not recollect a single instance where the courses and distance given in the document would bring him to the monument he was looking for, and that with two exceptions he found the area much in excess of that called for by the title papers. He cited

as an instance of this excess (R, 96) the Alamo de Seville, where the area called for in the title papers was 4 *sitios*, and the surveyor ran 200 cords, or 2 leagues, to each cardinal point, and in which there was found an area of 23½ *sitios*, thus making the total area of said grant 102,355 acres, of which, deducting the legal area of 17,354 acres, was left an excess of 85,001 acres, and for which title to the full extent of the *demasias* had been issued by the Mexican Government.

It is to be noted that this extreme case of an excess of 85,001 acres cited by Mr. Bonillas falls very far short of the excess named in the case at bar, where his survey includes over 140,000 acres above the four *sitios* named in the title papers.

Mr. Bonillas also produced before the court, as a part of his testimony, Exhibit F–60 (R., 444), being a list of grants in Mexico in which the discrepancy between the legal area and the total area is most striking. An examination of this list, which consists of sixteen grants, will show that in none of them was there any such excess as claimants attempt to secure in this case under the survey made by Mr. Bonillas.

Coming to the survey made by Mr. Bonillas himself of the San Rafael de la Zanja grant, he testified that he made this survey in the year 1895, carrying with him to the ground a certified Spanish copy of the *titulo*, and that based upon said survey he had made a map of the grant correct in every respect and which was offered in evidence as plaintiffs' Exhibit F–25 (R., 98, 412).

That in making this survey he first made a reconnoissance for the purpose of defining the monuments and natural landmarks, and then completed the survey by triangulation, that being in his opinion the most accurate method of surveying; that in making this survey he tried to follow the steps of the original officials by going to the initial point of the survey, and from the description given he would ascertain the location of the monuments or natural objects without regard to the courses and distances named in the title papers, and that he had acquired this habit of disregarding courses and distances because he had never found them to be in accord with the natural landmarks called for, and if he attempted to comply with the expediente in this respect he lost both time and patience.

That on this survey he had two guides with him, being parties from Santa Cruz, claiming to be perfectly familiar with all the country around there; these two parties being Concepcion Elias, a witness whose testimony will be hereinafter considered, and a man named Vergara, who, although still living (R. 98), was not produced on the trial; that he had them first show him the three monuments marking the north boundary of the Santa Cruz town lands, which he found to be identically as he had known them before, these monuments being also the south monuments of the grant in controversy (R. 99).

Reading from the expediente he stated that that document fixed the central point at a place named San

Rafael; that said place is a very well-known place in the valley, there being some ruins there and it being located on a level *mesa* on the east side of the Santa Cruz River and about a half mile south of the old ranch known as La Zanja and about 4 miles north of monument No. 111 on the international line; and that the place La Zanja means a ditch in the channel or bed of the valley. Going north from the center monument to the north center monument, as fixed by him, witness stated that he did not remember of a place between these two points that would answer the title call for the north center monument, and that although he looked for such a place he did not find it, except at the point which he adopted on his map as the north center of the grant. (R., 100.) Witness identified photograph F–26 (R., 100,412) as a picture of the center monument located by him, the starting point being the point where there is a pile of rocks and a man standing by it, said pile of rocks being 4 feet in diameter and 3 feet high (R., 121) and having the appearance of an old monument (R., 101). This photograph is worthy of close scrutiny by the court, in that it shows the topography of the country toward the northeast from said center point, the Huachuca Mountains constituting the range seen in the background of the picture (R., 134, 321), and the Canelo range constituting the lower line of mountains seen in the foreground of the picture (R., 133, 134, 321), and there being a depression about midway of the Huachuca Mountains called Tanner's Pass (R., 134). The record shows that

the Canelo hills shown in the photograph do not join the Huachuca Mountains, but end about 3 or 4 miles west of Tanner's Pass and a mile or two northwest of the Bonillas east center monument (R., 134) and that the Potrero Gulch (canyon) heads between the south end of the Canelo Hills and Tanner's Pass. The record further shows that the east center monument of the grant, as adopted by Bonillas, is a little southwest of Tanner's Pass, this latter also being called Sycamore Pass and being N. 56′ 26″ E. from the center. This reference to the record in connection with the said photograph will prove useful in the further consideration of the case.

Plaintiffs' Exhibit F–40 (R., 412) is another photographic representation of the center monument, but looking west, the Plomosa or Patagonia mountains appearing in the distance and witness Concepcion Elias in the foreground (R., 113).

Coming to the north center monument (R., 101), witness states that he found it at a very large oak tree, with some scars on the trunk and a pile of stones around it, this tree being on the border of a wash or arroyo which seems to run directly toward the place known as El Peñasco; said tree being apparently 2 or 3 feet in diameter and very old, and said monument also being apparently of great age. Witness testified that the word *peñasco*, as understood by him, means a large rock, whether isolated or otherwise and in place or not, and that this *peñasco* seemed to be very well known by everybody, including the guide Elias, by

that name. That it is not so known generally in that community will appear from the testimony of twelve or fifteen persons sworn on behalf of the Government, whose evidence will be presently considered.

Witness stated (R., 102) that standing at this tree one can not see this *peñasco*, but by leaving it a few steps and going in the direction of the arroyo it can be seen, and that from that point the cragged rocks composing the *peñasco* stand out as a landmark of great prominence in that section and can be observed for 10 miles away. Witness thereupon identified a number of photographs showing this center monument and the alleged *peñasco*. Photograph F–27 (R., 412) shows the pile of stones and the tree situate on the north bank of an arroyo (R., 162), the *peñasco* being southwest therefrom (R., 163). Photograph F–28 (R., 412) represents the *peñasco* looking toward the east (R., 164). Photograph F–29 (R., 412) shows the *peñasco* taken from the east (R., 103). Photograph F–30 (R., 412) shows the *peñasco* taken from the south at a distance of three-quarters of a mile or 1 mile, with the Red Rock Creek, along which the wagon road runs from San Rafael to Crittenden, appearing in the foreground (R., 103). Photograph F–31 (R., 412) represents the *peñasco* from the west, from the summit of the red hill near the foot of the red mountain, taken by Bonillas as his northwest corner (R., 105), the Cottonwood Wells being a half or three-quarters of a mile northeast of this hill at the foot of the red mountain (R., 106). Photograph F–32 (R.,

412) represents the oak tree, the Bonillas' north center of the grant, showing the border of the arroyo running toward the *peñasco*, with the red mountain, the alleged northwest corner, in the open space in the distance (R., 106). This photograph is taken from the east of the north center, looking west—perhaps a little southwest (R., 106)—the red mountain or Bonillas' northwest corner being the most distant and the Sonoita hills not being visible (R., 176) and lying west of the red mountain (R., 106), and the *peñasco* likewise being invisible from this point (R., 176). The particular tree constituting the north center is that under which the man is sitting who, in each of these photographs, is the Mexican Concepcion Elias. Photograph F–33 (R., 412) represents the *peñasco* as located by Bonillas, looking from the west toward the east, and is taken from the foot of the red mountain constituting the Bonillas' northwest corner (R., 107). The *peñasco* claimed is the high rock on the right of the picture. Photograph F–34 (R., 412) represents the bottom of the arroyo which runs toward the *peñasco* from the foot of the oak tree that is described by Bonillas as the north center monument of the grant (R., 108), the north center not being visible in this picture (R., 133), the *peñasco* likewise not being visible (R., 374). It is uncertain from the record just what the direction is from which this photograph was taken. Bonillas testified (R., 108) that it is taken looking from the direction of the *peñasco*, whereas Colin Cameron testified (R., 163) that it is a picture of the arroyo looking toward the southwest.

Bonillas testified that there was not to his knowledge any other *peñasco* between the north center as located by him and the red mountain; although he admitted that there was another mountain called Saddle Mountain, which has an abrupt bluff on the south side thereof, but which does not appear to be a *peñasco* from the point he took as the north center of the grant, although from some directions (R., 108) the north side has the appearance of a *peñasco*.

The relevancy of this testimony as to Saddle Mountain will appear when the testimony for the Government is considered, showing by its great preponderance that this alleged Saddle Mountain has been known from the earliest times as the *peñasco*.

Referring further to the northwest corner, witness Bonillas testified (R., 104) that it is a very singular fact that just about where the north center monument is you can observe through an opening formed by a canyon of this very wash of which the title papers speak, running toward the west, a high chain of limestone hills to the right or toward the north, looking from the north center monument to the west and ending abruptly into this canyon, and also the hills coming down from the same canyon from the south, there being an opening through which can be seen this red mountain in the distance, and that looking from the north center monument this red mountain seems to be in an open place beyond these hills or ridge. This red mountain, witness thinks, is the only red mountain which can be seen, it being at the end of the Plomosa range of mountains, also known as the Patagonia range

of mountains, and being the highest mountain in the neighborhood and having a red appearance due to the presence of red oxide of iron. Witness testified that this red mountain can be seen from all four cardinal points of the compass, although he is not certain that it can be seen from the center of the San Rafael de la Zanja grant as located by him (R., 105); that while there are other mountains out in that direction having a reddish appearance, they are not as large or conspicuous as this one. Further describing this northwest corner (R., 223), witness dwells upon the use of the word *descubre* as meaning discover, and that this term is impressive as applied to this red mountain for the reason that it can be seen in the distance only through a small opening apparently not more than 100 yards in width and having nothing at the end of the funnel except the red mountain and the edge of some hills, and that the Saddle Mountain can not be seen from the north center, nor can the Peñasco, although the latter may be seen by moving a little toward the north.

From the description given by Mr. Bonillas, and just referred to, it will be seen that while the red mountain or alleged northwest corner of the grant can be seen from the north center, the Sonoita Hills can not be seen, nor can the peñasco selected by Bonillas be seen; nor can the peñasco testified to by the Government witnesses be seen, so that Mr. Bonillas's wonderful discovery of a red hill seen from the north center monument through an opening between the peñasco and

the Sonoita Mountain, as described in the title papers, lacks every essential element except the existence of the hill itself, since the opening through which it is seen is not between these natural objects, they being under the testimony for claimants confessedly invisible from this north center.

Coming to the northeast corner of the Bonillas survey, witness testified, reading from the expediente, that this monument was originally placed at a point 200 cords, or 2 leagues, from the center monument at the point of the Sierra del Cobre, copper mountain, upon or beyond a spring known as El Carrisillo (R., 109). Witness testified that the guide he had with him informed him that a spur of the Huachuca Mountain was known as the Cerro del Cobre, and that he inquired of several old residents of Santa Cruz, familiar with that country, and that they told him it was so called. Witness identified Plaintiffs' Exhibit F-35 (R., 412) as showing the Sierra del Cobre, that mountain being indicated by the highest part of the elevation shown in the photograph, and the northeast corner being at the white flag indistinctly appearing in the picture about midway between the center and the left-hand side of the picture (R., 109), and that while the point of the copper mountain can be seen from the center monument of the San Rafael grant, the particular point taken as the northeast corner can not be seen because there is intervening the Canelo range of high hills. Witness testified that he found a spring in this neighborhood known locally as Igo spring and called by the

residents of Santa Cruz, el Carricillo or Carricito. This spring has an abundant flow of water bubbling at the foot of the mountains at the north end of this Huachuca Mountain, or Sierra del Cobre, and an attempt has been made there to gather the water. This is illustrated in Plaintiffs' Exhibit F-36, in which the Mustang or Whetstone Mountains appear in the distance, the spring near the house on the right-hand side of the picture, the northeast corner monument about three-fourths of a mile beyond the spring (R., 111), and the Babocomori Valley intervening between the spring and the mountains in the distance (R., 133). Witness described the monument as being formed of disintegrated rocks, copper stained, situated at the foot of the mountains, having the appearance of an old monument that had been rebuilt. Plaintiffs' Exhibit F-37 (R., 412) was identified by witness as the northeast monument just referred to.

Coming to the south center monument, described in the title papers as being at the mouth of the Potrero Canyon, where that canyon enters the valley, and being the same point where the north center of the lands of the presidio of Santa Cruz is situated, witness testified (R., 112) that this canyon or *cañada* is a very well-known gulch or valley flowing from northeast to southwest and entering the main valley of the Santa Cruz River, and that at its mouth, upon a rising elevation, a pile of stones constituting the south center monument is found. Witness testified that this monument had been pointed out to him on different occasions by

old inhabitants of Santa Cruz as the monument that marked the north boundary of the town lands, and that it is apparently an old one at the base, subsequently built up by rocks placed on the top. Witness identified plaintiffs' Exhibit F–38 (R., 412) as a photograph of the south center monument looking toward the northwest, with the Patagonia Mountains in the distance, and what seems to be the red mountain, previously testified to as the northwest corner of the grant, appearing at the north end of said mountain (R., 112). After identifying photograph F–39 (R., 412), witness testified that this correctly represents the south center monument looking toward the northeast, with the Huachuca and El Cobre mountains in the distance, the latter appearing toward the north point of the range (R., 113).

Coming now to the southwest corner, which is described in the title papers as being "on the Jaralito at the corner monument of the lands of the aforesaid pueblo," witness testified (R., 113) that "Jaralito" means a grove of water willows, and that he found such a place, it being a well known little valley with a little stream running through it called Jaralito and with water willows very abundant. At this place witness found a monument, of which he had known before, standing at the slope of the mesa and having every appearance of age. This monument, witness testified (R., 114), had been pointed out to him as the northeast corner of the presidio lands of Santa Cruz.

The east center monument is established by the

expediente beyond Potrero Canyon on a mesa contiguous thereto. Witness testified that going toward the east from the center monument, already identified by him, a mesa and the Potrero Gulch are crossed, after which a very high mesa at the foot of the hills of the Huachuca is reached, on which is a large pile of rocks, bearing "unmistakable signs of age," and which witness selected as the east center monument of the grant. Witness identified plaintiff's Exhibit F–41 (R., 412) as correctly representing this east center monument, the mountains in the background being the Huachuca Mountains.

Referring to the west center monument, which the title papers place at the summit of a high hill in the Plomosa range of mountains, almost southwest from the small hill known as El Caloso, witness testified that El Caloso means "lime hill," and that there is such a hill in that section of country, very well known, and being the only point that could be taken for a lime hill. Plaintiff's Exhibit F–43 (R., 412) was identified by the witness as a representation of the El Caloso hill, which witness stated was visible from the center, east center, south center, and southwest corner, and anywhere along the valley (R., 115).

Witness, after referring to the title papers which fix the southwest corner at "a point beyond the San Antonio Pass on two small hills which serve as the west corner of the lands of this presidio" (Santa Cruz), stated that he found the San Antonio Pass, and that it lies to the northwest of the town of Santa Cruz, being very

well known as the pass through which runs a trail from Santa Cruz to Tucson. Witness testified that he had known this monument as far back as 1885 or 1886 in surveying the Santa Barbara grant, in the State of Sonora, the northwest corner of which is on this same little hill, not over 80 feet from the monument of the town lands of Santa Cruz, which is the southwest corner of the San Rafael de la Zanja grant, and that these two little hills are very noticeable both from east and west, and can be seen from the south-center monument. Witness identified plaintiff's Exhibit F 44 (R., 412) as representing these two small hills south of the San Antonio Pass, constituting the southwest corner (R., 116), and that the monument at this point had been pointed out to him by the people of Lochiel (La Noria) and the authorities of Santa Cruz at the time he made the official survey of the Santa Barbara grant (R., 117), and that this monument, while built up, was the same monument. On cross-examination witness testified that he had been in the employ of grant claimants in Arizona, and in his work in the State of Sonora he acted under official appointments to survey public lands and also land grants, the latter for the purpose of ascertaining the *demasias* or excess within their boundaries, so as to ascertain the quantity that the owners of the grant had to pay for (R., 119); and the procedure was by petition to the Government by the owners of the land, or the people who desired to acquire the excess that might be found inside of the boundaries, and that thereupon a surveyor was appointed

seeking not to carry out the theory of the claimants, but to do his best for the Government (R., 119, 120), and that in making such surveys of grants in Mexico the monuments were usually determined without reference to the course and distance.

The method of ascertaining the excess within outboundaries over the quantity paid for is more fully pointed out in the testimony of Bonillas given in the case of *Faxon* v. *United States* (171 U. S., 244), and which is reproduced in the record, pages 534, 535.

Witness testified that on his survey of this grant he started from the ranch of Mr. Colin Cameron, the latter not being there, however, during the survey, and that the survey consumed twenty to twenty-five days; that as to the ruins at the center monument there seemed to be an accumulation of soil, without any of the adobe bricks being visible, and that there were ruins of adobe houses about a mile and a half north of the international boundary line, and on the west side of the river, which ruins were called by the guides who accompanied witness New San Rafael, these guides claiming that they knew when these houses were built there, having been built during the French invasion in the early sixties. It will be seen from the testimony of the Government to be presently considered, that the Old Place of San Rafael, and not the New Place, was located at these ruins, a mile and a half north of the international line.

Witness testified that the time when he made his survey, which was in September, 1895, was the rainy

season, and there was water everywhere, and that he did not examine the country approximately two hundred cords north of his center monument with a view to finding the north center (R., 123); that the Sierra del Cobre is a spur from the Huachuca Mountains and runs all along the west side of the Huachuca Mountains to a low pass that is about the center of those mountains (R., 124), the name of this pass being Tanner's Pass (R., 124), as heretofore noted in connection with the photograph marked Exhibit F–26, and that the Cobre Mountains extend from this place of Tanner's Pass to the north end of the Huachucas. It will be noted that this places one point of the so-called Sierra del Cobre at Igo's and the other point at Tanner's Pass, which is in the immediate vicinity of the southeast end of the Canelo Hills, and in the vicinity of Campini's copper property, to be hereinafter considered.

Witness testified that there were signs of copper-stained rocks at the north end of the Huachuca Mountains, and that the monument of stone situated there, while apparently an old one, had been moved and built up (R., 124); that the reed known as *carricillo* grows in wet places, and as the witness recalled, such *carricillo* was found at the Igo Spring.

Witness testified that in locating the north center monument his guides took him right to the point which he adopted, and that he did not stop anywhere to search for it nor to look for any other north center. (R., 126.) It may be here noted that Concepcion Elias, the Mexican witness and the only one of those guides

produced on the trial and whose photograph appears in a number of the exhibits presented by plaintiff, had previously been on a survey with Roskruge and Cameron, and was thus fully prepared to guide Bonillas to the point which accorded with Roskruge's survey on the one hand and was satisfactory to Claimant Cameron on the other.

Witness described the Canelo Hills, which bisect this grant as surveyed by Bonillas, running from his east center monument to his north center monument, as being a divide or watershed and composed of very high hills, equal in height to Saddle Mountain and the peñasco heretofore considered. The improbability that the Mexican Government would have made a grant, or the original claimant have asked for a grant having topographical features cutting that tract in half and making a portion of it practically inaccessible from the other portion will be presently considered as bearing upon the proper location of its north boundary.

Referring further to the Saddle Mountain and the peñasco, Bonillas (R., 127) stated that the latter was probably higher than the first, but that Saddle Mountain was nearer to the valley and in plain view as one rides up the valley, and that the Plomosa or Patagonia Mountains, which are well known, are in full view looking toward the west from the center of the grant. Witness testified as to Saddle Mountain being a very abrupt elevation on the south and west, being called Saddle Mountain by the Americans, and Picacho by the Mexicans, but not being in the opinion of witness

a picacho (R., 375), a *picacho* being a mountain with an acute point and a *peñasco* a big rock (R., 128).

Witness testified that he found no artificial monuments at the northwest corner of the grant, or the west center of the grant (R., 128, 129); that the east center as located by him is nearly 9 miles northeast from the center, and that in the vicinity of this east center and beyond the Cañada del Protero "there are mesas all over there," thus showing that there is absolutely nothing to fix this east center monument except one of the hundreds of piles of stones existing in that country.

Witness admitted (R., 129, 130) that while the northeast corner of the Santa Cruz lands was fixed by the title papers as the southeast corner of the San Rafael de la Zanja grant, his survey placed the southeast corner of the San Rafael de la Zanja grant 19,449 feet, or over 3 miles east of the northeast corner of the Santa Cruz grant, as surveyed by Quijano, and accepted by the Santa Cruz people, but he accounted for this fact on the ground that the Santa Cruz people had accepted Quijano's northeast corner in order to avoid a lawsuit, their true boundary being as fixed by Bonillas. Witness produced (R., 137) a sketch of the relative positions of these points as located by Quijano. This sketch appears as plaintiff's Exhibit F 46, being the last map in the record between pages 412 and 413. An examination of this map will show the discrepancy between Bonillas's southeast corner of the San Rafael de la Zanja grant, at point E, and the northeast corner of the town lands of Santa Cruz, 3 or more miles far-

ther west. Bonillas further attempted to account for this discrepancy (R., 138) by stating that in the survey of adjoining grants he had summoned the local authorities of Santa Cruz to point out their monuments, and they had pointed out to him, as their ancient northeast corner, the point adopted by him as the southeast corner of the San Rafael de la Zanja grant. It is to be noted, however, that in the face of the existence of this supposed ancient monument they were willing to accept Mr. Quijano's survey limiting them to a point several miles farther west.

Referring to the northwest corner, or Red Hill, as viewed from the north center monument, and which has been heretofore considered in connection with plaintiff's Exhibit F 32, a photograph, witness testified that the Sonoita Hills, mentioned in the title papers, are west of the river, running on the west side thereof, and that these hills are *not* visible from the north center, being cut off by high ranges and the red mountain, and being back of the red mountain to anyone standing at the north center or anywhere east of that red mountain (R., 131). It is to be observed that it would require one of even more ingenuity than Mr. Bonillas discloses to explain how there can be seen from the north center a red hill in the opening between the Peñasco and the Sonoita Mountains, when the latter is not visible at all from the north center, and is in fact from that point *hidden behind* the red mountain, the very natural object, which is stated in the *expediente* to stand between it and a third natural object.

Witness, referring to the west center monument, testified that El Caloso Hill, which marks the location of that monument, is a high one, with Washington mining camp situated on its slope, and that the Patagonia Mountains, which run from north to south, has foothills all along its eastern side. It is here to be remarked that while Bonillas and the other witnesses for claimants all testified that El Caloso Hill is a prominent landmark and is a mountain of considerable dimensions, the title papers speak of it as "the small hill known as El Caloso" (R., 132, 528).

On redirect examination (R., 135) witness testified as to the crudeness of the ancient methods of taking courses and measuring distances in the survey of lands; that the ruins at the center of the grant as taken by him are much older than those at the point a mile and a half north of the international boundary line, and that these latter were houses occupied by Governor Piscarro when driven out of Mexico by the French invasion.

Witness testified that he had subsequent to making his survey of September, 1895, made a survey of the San Rafael de la Zanja grant, running 100 cords from the place taken as the center to the north, and that he did not remember finding at the end of such measurement any arroyo such as would answer the calls of the *expediente* from the north center monument, the water at that point not running toward the peñasco; and that similar measurements made south, east, and west failed to encounter objects that would answer the calls of the

expediente (R., 142). He further testified that he had made a reconnoissance of the country situated 200 cords north from the center, and he found no water and no arroyo running toward the peñasco or toward Saddle Mountain, and he found no natural objects answering the calls of the *expediente* (R., 143); that a similar reconnoissance eastward showed that running 200 cords from the center would not reach the Cañada del Potrero, but would terminate some distance west of it, and that he did not find at the end of such distance any point that would answer to the calls of the *expediente;* that a similar reconnoissance 200 cords to the west did not reach El Caloso, or encounter natural objects conforming to the *expediente;* but that a reconnoissance 200 cords south from the center brought one very close to the mouth of the Potrero Cañada (R., 143).

Coming to the quality of the land (R., 140-141), witness pointed out that the original sale of 4 *sitios* was on the basis of 3 *sitios* containing running water and the fourth as being capable of furnishing water by means of wells. Witness testified (R., 144) that measuring exactly 100 cords north, south, east, and west from the center monument, as taken by him, and thereupon platting the land thus measured in four quarters, so that there would be 1 *sitio* in each quarter, there would be permanent running water on only two of them, to wit, the northwest and the southeast quarters, or *sitios*, the other two being dry. Witness testified that a reconnoissance of the tract included

within a measurement in each direction of 200 cords from the center, as taken by him, showed that if such a square was divided into four equal quarters by lines running from the center to the side lines, there would be permanent running water on only two of such quarters (R., 144), and that if the total tract of land, as surveyed by him, were cut into four equal quarters by lines connecting the north center, east center, west center, and south center monuments with the center monument, as taken by him, there would be permanent running water in three of these quarters, but witness did not believe there would be any permanent running water in the southwest quarter (R., 144-145). Witness went on to testify as to where such permanent running water would be found in the several tracts; that in the northeast quarter there is water north of the Canelo hills, in the valleys running north, in the Coches Valley, and the Carricillo Spring; that in the northwest quarter there would be water near Harshaw, which is southwest of the Peñasco and Saddle Mountain, said water being about a half mile south of the latter and about a mile and a half east of the west boundary; there would also be water near Cottonwood Wells, and in the southeast quarter there would be running water in Potrero Gulch and at the Jaralito, but that he did not think there would be found any permanent running water in the southwest quarter of the grant, although in San Antonio Pass there is water in the rainy season and during the winter. Witness testified as to the existence in the southwest quarter, however, of the place

known as La Noria, which means "the well," and that there are several wells at said settlement. The purpose of this finely-spun theory as to a well in the southwest quarter is evidently to fix that quarter as being the one upon which a value of $30 was fixed originally on the ground that it could be watered only by means of wells. One of the many defects of such a theory, however, if one of this fanciful nature is to be seriously discussed, is the fact that the map made by Bonillas himself shows that the southwest quarter has water in it, a glance at his plat, plaintiff's Exhibit F 25, showing that the Santa Cruz River is largely west of a line connecting his center monument with his south center monument. The testimony of the Government's witnesses is abundant to the effect that in this southwest quarter there is a large amount of permanent running water.

Coming to the consideration of the survey made by Bonillas as compared with the survey made for claimants by Roskruge (the latter being in the record as Exhibit F 52, page 427, and having been made in the year 1887), Bonillas testified (R., 147) that he took the same northeast monument as Roskruge, and also the same north center, and yet the latter on the survey (R., 148) are confessedly a quarter of a mile apart. Being examined more in detail on the subject (R., 149), Bonillas shows that the difference between his course from the northeast corner to the north center and that taken by Roskruge is about 3 degrees and the difference in their distances is about a quarter of a mile; that the Bonillas course from the north center to the

northwest corner is south 65 degrees 27 minutes 42 seconds west, as against Roskruge's course of south 80 degrees 15 minutes west, and the difference in the distance measured by these two eminent surveyors, between what are presumably the same points, is over a mile and a half; that Roskruge's north center is south and east of that of Bonillas's and his northwest corner north and east of Bonillas's; that the difference in the distance from the northwest to the west center monuments on these two surveys is over a mile and a quarter and the difference in course from the west center to the southwest corner on the two surveys is over 3 degrees, and the difference in distance is about half a mile (R., 150); that Roskruge's southeast corner and Bonillas's southeast corner are a mile apart, the former's being about south 12 degrees 30 minutes west from Bonillas's corner; that Bonillas's east center is three-eighths of a mile from Roskruge's, and the discrepancy in the course from the east center to the northeast and southeast monuments is correspondingly noticeable.

It is entirely evident from the discrepancy in the measurements and courses just referred to that Bonillas and Roskruge, under the same employment and guided by the same omniscient Mexican, Concepcion Elias, selected in several instances entirely different objects as the boundaries of this grant. As disclosed by their testimony, each of these witnesses are entirely certain that their locations are correct, and that their surveys, in each instance made by triangulation (R., 149, 201),

are entirely accurate. This result, which reverses the old rule that things which are equal to the same thing are equal to each other, is only one of the many difficulties and absurdities resulting from attempting to make a grant of 4 *sitios*, or 16,000 acres, contain 40 *sitios*, or 160,000 acres.

Witness further testified that the ruins in the Santa Cruz Valley, about a mile and a half north of the international boundary line, to which he had already testified, are about 100 cords from the south center monument as located by him (R., 152), and that a *sitio* is a square of 5,000 varas, or 1 league (R., 155). He further testified that within the outboundaries he had mentioned there could be 6 or 8 *sitios* laid off with permanent water in them, and showed (R., 155), from the fact that springs in that country dry up and disappear—due to various causes—that there may have been permanent water at the date of the grant on the alleged dry *sitio* that is not to be found there now, and similarly that springs have been known to start out in that country afresh as a result of earthquakes (R., 157).

COLIN CAMERON, being called as a witness (R., 157), testified that he was the claimant of the San Rafael de la Zanja grant, having purchased it for himself and others in 1884 from R. R. Richardson, at an aggregate expense of over $80,000, with taxes imposed and collected by the officials of the county of Pima of over $25,000 since the year 1882 (R., 158); that at the time he purchased from Richardson the latter pointed out to

him some of the boundaries, among them the southwest corner at the same place identified by Bonillas, the south center monument, also at the same place mentioned by Bonillas, and the northeast monument as fixed by Bonillas; that at the last-named monument is located the Sierra del Cobre, being the north end of the Huachuca Mountains; that the spring at this point was pointed out by Richardson, who told witness that it was Carricillo spring; that Richardson did not point out the exact spot of the other monuments, but that witness and Richardson were together in the vicinity of the southeast monument, and Richardson then told witness that the northwest monument was at the red hill taken by Bonillas, but that he, Richardson, did not know exactly where it was (R., 159). Cameron further testified (R., 160) that he had been in the cattle business for a number of years, and that to furnish ideal conditions for cattle raising animals should not be required to go over 2 miles a day for water, and that they lose flesh as soon as they go over 3 (R., 160); that there is very little water near the center monument taken by Bonillas, but that up to 1890 there was a little spring in front of witness's house, although not sufficient water for cattle, but witness had developed it so that it was now capable of watering cattle. The house of witness is at the point marked on Bonillas's map (R., 25) as San Rafael ranch, and the spring thus referred to by him, is, therefore, in the alleged dry, or *well* quarter upon which Bonillas laid so much stress.

Mr. Cameron further testified that a square measured

on the basis of 100 cords toward the cardinal points, from the center taken by Bonillas, would contain permanent running water, but not sufficient to support more than 400 head of cattle without artificial means (R., 161); that viewing the grant as one of 16 square leagues, or 200 cords measured in each direction from Bonillas's center, cattle were obliged prior to 1890 to come down to the southern part of the grant, to wit, at Sheehy's spring, near the international boundary line, for the purpose of securing water (R., 162).

Witness expressed the opinion (R., 162) that the monuments of the grant were put in places where they would be placed by a man who was seeking that particular tract of country for a cattle ranch, being placed just where they would control the water. Witness did not make it entirely clear whether the monuments to which he refers were those placed by Bonillas, or by the original surveyor. If he refers to the Bonillas survey, the Government freely admits that the monuments on that survey were placed with the most scrupulous care so as to control not only the water in the Santa Cruz Valley, but a large portion of the water sources on the slopes draining into the Sonoita and Babocomari rivers, locations which, it is respectfully submitted on the title papers, were absolutely foreign to the purpose of the original purchaser of this tract of land, and are altogether the product of comparatively modern enterprise.

Mr. Cameron testified (R., 162) that he had been to the north center monument selected by Bonillas, and

had found there a monument under a large oak tree on the north bank of the arroyo running southwest to what Bonillas puts on his map as the peñasco: that the land north of the north center consists of some mesas sloping toward the Babocomori Valley, and the lands south of it are very rocky, broken and hilly; that the arroyo is south of the tree and the peñasco is south of west of the tree; that the red mountain claimed by Bonillas as the northwest corner can be seen from the north center monument, the arroyo running from said tree cutting the Canelo Hills in two and leaving an open space through which these red hills can be seen. Witness further testifies that this red hill stands in the open, but the Sonoita Hills looking from the north center are farther north and can not be seen because the red hill intervenes and the Canelo Mountains are in the way (R., 163.) In view of the fact that the red hill at the northwest corner is stated by the title papers to be visible through an opening between the peñasco and Senoita Mountains, the fact that the Senoita Mountains can not be seen from the north center and the true peñasco likewise can not be seen, throws considerable light upon the question as to whether or not this northwest corner and the north center monument are correctly located by Bonillas.

Witness testified (R., 164) that the true peñasco is at the place selected by Bonillas, and that Richardson pointed out this place to witness as the peñasco at the time he went around the grant with him and also showed him Saddle Mountain (R., **164**). Mr. Richard-

son flatly contradicts witness in his testimony, to be hereinafter considered, and under the circumstances of this case, as disclosed by the record, it is not difficult to decide which witness is to be believed. Witness further testified that he saw the pile of stones at the foot of the tree at the north center of the grant, and that looking toward the peñasco from the north center or vicinity no other red mountain is visible except the mountain taken as the northwest center. Witness testified that he had been to the northeast corner of the grant and found it to be at the north end of the Huachuca or Sierra del Cobre Mountain, and is marked by a pile of stones placed there as the monument of the grant, right along the public highway, and that said monument appeared to be old in 1883 as did the monument at the north center, the oak tree at that time being about 3 feet in diameter (R., 164. 165); that in the country intervening between the center monument and the northwest corner no other red hill answering the description of the *expediente* appears, and there is no spring from the center toward the northeast corner answering the title, except the spring at Igo's (R., 165).

Witness stated that the east center as located by Bonillas is found on the east bank of the Potrero Cañada and on the mesa above it; that the name Potrero is that generally applied to that cañada by the Santa Cruz people and others and has been so known ever since witness has been there, being also called Parker's Cañada, because the Parker family live there, and that there is no other monument answering the call

for the east center, going east from the center monument (R., 165, 166), the pile of stones locating the east center being about 6 inches or so in height and being apparently of great age.

Coming to the south center, Mr. Cameron describes it as being on the north edge of a small mesa right at the Cañada del Potrero, which point is marked by an old monument that has been there for years (R., 166). Witness further testified that he had been to the southwest corner, which is a short distance south of the trail going through San Antonio Pass from Santa Cruz to Nogales and about half way up the slope toward the summit of the mountain, at which point are to be seen two small hills. Similarly the west center monument is found on a very high rocky hill close to and southwest of El Caloso, which last is a high lime hill or peak with limstone top and is a very prominent landmark both from the northeast and the southeast (R., 166), and that there is no other lime hill in the Plomosa Mountains and no other place that will answer the call of the *expediente* in that direction. In view of the fact that the *expediente* describes this as a *small* hill, it would seem that Mr. Cameron's selection was unfortunate in differing from the expediente in a most important respect.

Coming back to the center monument (R., 167) Mr. Cameron testified that the point selected by Bonillas is the same point indicated to him by Richardson as the center monument in February, 1883, there being a pile of stones at that place, and in addition evidences

of streets between adobe ruins long since fallen down and covered with grass, and with marks of walls or corrals, and there being no other ruins within the Bonillas survey (R., 167).

On the subject of ruins about 100 cords south of the Bonillas center and which the Government witnesses describe as old San Rafael, Mr. Cameron describes it as a long house built for a number of families with two other houses there, one of them never completed; that at the time he, Cameron, went there there was no one living there, Richardson having bought out the man who had lived there, but they said Piscarro had lived there, having been driven out of Sonora in the sixties (R., 167, 168).

Witness further testified (R., 168) that the monuments are in the same locality as in 1883, the only change made in them being the fact that they have been built up to some extent.

Witness further testified (R., 168) that he did not know that the point selected by Bonillas was the southeast corner of the grant until after Bonillas had made his survey, and that he was not with him on his survey. He further testified that the rainy season in that country is from July to September, and again in November and December, with considerable snow (R., 169), and that it rains also in October (R., 174), and, referring to the topography of the country north of the Canelo range, he testified that cattle do not range northeast of the Canelo hills, that being a very rough section of country, and it being impossible to get cattle over there (R., 169).

This testimony is relevant as bearing on the question as to where the north limits of this grant were fixed by the original survey, it being extremely improbable that the original claimants in seeking a cattle range would have contemplated including in it a large section of country which, even now, when Indian hostilities have ceased, is inaccessible to cattle from the San Rafael Valley.

Cameron testified to the existence of permanent water in various parts of the grant, contending (R., 170) that the southwest quarter is mesa land with no permanent running water; but admitting that even here water can be secured at certain portions of the year, there being water at the San Rafael ranch house, the residence of witness.

Witness testified that there were a number of settlers on the grant when he bought it (R., 170); that he bought a dozen or more of them, and stopped doing so only because he believed that the people whom he had bought out got other men to "jump" the places in order to sell to witness again.

On recross-examination witness testified as to his interest not only in the grant on trial, but also in the Babocomori, Agua Prieta, Arivaca, Sonoita, and Boquillas land grants in Arizona, all of them pending before the Court of Private Land Claims at the date of the trial of this cause, and all of them involving questions of quantity, constituting one of the main issues in this case. Cameron testified that he had had this grant surveyed twice, once by Roskruge and

once by Bonillas; that he was with Roskruge at one of the points on his survey, and was shown afterwards by him the particular points he took (R., 172). He admits (R., 173) that Roskruge and Bonillas took monuments entirely different for the southeast corner.

Referring to the flow of water from the neighborhood of the Horse Corral shown on Roskruge map, Exhibit F–52 (R., 427), Mr. Cameron testified that the flow from Horse Corral is in the direction of Saddle Mountain, and indicating this direction on said map F–52 he describes this flow as follows (R., 174):

> Q. During the rainy season where is the flow in the Santa Cruz River—where does it flow from and to where, during the rainy season—from where to where?
>
> A. It starts right there at this point—this represents the mesa—marked "horse corral."
>
> Q. And flows down to where?
>
> A. It comes right close to this Saddle Mountain, and comes down this arroyo on down here.
>
> Q. Just indicate it.
>
> A. From the Saddle Mountain it comes here to this road, right down here, and then right down in there.
>
> Q. How far does it flow south?
>
> A. To Tucson.

Witness further testified on this subject as follows (R., 177):

> Q. I wish you would indicate on the map the course of that stream running southwest from the horse corral.
>
> A. This country up here north of the horse corral slopes in the first place in the direction

of the west—that line represents the slope of the red rock country—then goes down this way here to Saddle Mountain, and then turns this way and runs west.

Q. I wish you would indicate on that map the direction. Make a line, and continue that line, showing where it comes back in the valley.

A. Here is a road coming from Harshaw—from Martinez to Harshaw. The water comes from above horse corral toward Saddle Mountain, and then runs half a mile or perhaps a mile; then it runs right down this Harshaw road.

Q. I wish you would indicate on that map the course of that road after you pass that mountain.

A. This map shows that this road runs up the valley to the letter C, southwest of horse corral, to the upper windmill.

It will be seen from the quotation just given that Mr. Cameron, the claimant himself, found an arroyo running from the vicinity of the horse corral in the direction of Saddle Mountain, which under the testimony of the Government is undoubtedly the peñasco referred to in the title papers. This furnishes one of the ingredients in the description of the north center monument in the title papers, and in connection with the Government's testimony, presently to be considered, leads easily to the conclusion that the north center monument, as originally placed, was in the vicinity of the horse corral and at the north end of the San Rafael Valley where it encounters the south slope of the Canelo hills. Mr. Cameron (R., 174) reenforces

this conclusion by his description of the Canelo hills as crossing this property from right to left, leaving the Santa Cruz Valley on one side of the range and the Babacomori on the other, and by showing (R., 175) that the northwest corner is only about 4 miles from the Sonoita River, being on the Sonoita side of the divide between that stream and the Santa Cruz Valley.

Witness admitted that the Bonillas and Roskruge northwest corners were 2 or 3 miles apart (R., 175), and stated (R., 178) that these two surveys were the only ones he had had made, and that the survey made by one McLaughlin and referred to by a number of witnesses for the Government was not made in his behalf, and that he simply went with McLaughlin to show him his monuments so that McLaughlin might correctly survey the "fourth standard south." Upon being confronted (R., 383) with his sworn testimony in another case to the effect that he had employed McLaughlin, that McLaughlin had gone there at his (Cameron's) expense, and that he (Cameron) had paid for his services himself, and that McLaughlin was not sent there by the order of any person, but went there to locate the grant so that he (Cameron) might know where the lines were, witness admitted that McLaughlin had been in his employ and had been paid by him The decrepitude of recollection which led Cameron to swear that he had not employed McLaughlin in this matter, when, as shown by his sworn testimony, he had employed him and paid him, is characteristic of a considerable part of his remaining testimony, and may

account for the issue of fact arising between what he states and what is stated by Mr. Richardson and other gentlemen whose character is as high as is possessed by any citizens of Arizona.

This reckless positiveness may also account for the testimony of witness (R., 178) to the effect that the northeast monument of the grant existed there at the time when he first knew the premises against the testimony of numerous witnesses for the Government to the effect that that pile of stones appeared there mushroom-like the morning following a visit to the premises by one of the Cameron claimants with his retinue of surveyors and monument builders. Witness Cameron admits that he was unable to find the north center of the grant when he first became acquainted with the property, and his testimony (R., 179–181) alternates between such statements (R., 179) as this:

> Q. Did you build it up at that time?
>
> A. No, sir.
>
> Q. You swear to that positively?
>
> A. Of course I do. I never touched them. I did not think that the monument itself cut any figure in it.

And this (R., 180, 181):

> Q. And you swear that you were never present at any time when any of these monuments were built up?
>
> A. No; different people may have put stones on them; I myself did on different occasions.
>
> Q. Did you do that?
>
> A. I did every time I got around, I suppose, perhaps.

Being asked further about the topography, witness testified that it is possible to cross the Canelo hills by wagon, there being two passes, the Muchachita pass and the Canelo pass, the latter pass being marked "Canelo pass" on Roskruge's map F–52 (R., 427), and that there is a pass through the Huachuca Mountains, known as Tanner's pass, about east of the center monument (R., 187).

The relevancy of this testimony as to the location of the Canelo pass will be appreciated by reference to the testimony of Angel Elias, above referred to (R., 20, 29, 30), where he testified that the tradition among old people at Santa Cruz was that the San Rafael grant extended as far north as Puerto del Canelo. Cameron's testimony as to the existence of Tanner's pass is also material in connection with photograph F–26 (R., 412) and the testimony of the other witnesses to the effect that the south point of what Bonillas calls the Sierra del Cobre is at this point: that copper has been and is found at this point and that there is a large spring there, thus making it a point conforming in its physical conditions to the title call for the northeast corner of the grant. That this alleged Sierra del Cobre extends as far south as Tanner's pass is further shown by Cameron's testimony (R., 184), to the effect that the Sierra del Cobre was the old name of the Huachuca Mountains, and that it goes to the south end of the Huachucas.

Referring to the east center monument (R., 186), witness testified that the country from the center monument in that direction is a rolling mesa, so level that

one can draw a team across to the bank of the Canada del Potrero, and that from the east center one can see El Caloso hill and the mesa on which the center monument is located.

Witness describes (R., 186, 187) the method by which the north center monument of this grant was found: That after searching all over the country for it, and at no time being able to find it, the parties at interest finally sent for R. C. Hopkins, then living in San Francisco, Cal. (R., 187), who, upon his arrival and on reading the title papers, said that this monument ought to be where the red hill could be seen "through an open in the mountains which was to be discovered in a clear place," and that when he said that, one of the men said that he could immediately take him to that point, and that this party immediately took witness and the others around where the north center of the grant is located, and that thereupon they "discovered the arroyo that leaves this north center monument that runs in the direction of the peñasco, and it was so plain to our minds that that was the locality intended and called for that we immediately knew it and have never had any reason to change our minds." When it is recalled that the arroyo referred to does not run toward the peñasco, for the simple reason that the true peñasco, as shown by the great preponderance of the evidence, is in an entirely different direction, and when it is further recalled that this red hill does not stand, as required by the title papers, in an open between the peñasco and the Sonoita Mountains, for the reason that

the peñasco does not exist where plaintiffs put it, and the Sonoita Mountains, according to plaintiffs' own testimony, is absolutely invisible from the north center monument, it will be seen that the great light which came to Mr. Cameron on this historic occasion was less in the nature of a discovery of the north center required by the grant documents than a culmination of a desire of long standing to secure within his grant the much-coveted water sources on the slope of the Babocomori and Sonoita valleys.

GEORGE J. ROSKRUGE was sworn on behalf of plaintiffs and testified to his being a surveyor by profession, having practiced surveying for about twenty-six years, and having held a number of official positions (R., 187).

He identified map, plaintiff's Exhibit F–52, as having been made by him, except as to the exterior light lines shown on the photograph of said map opposite page 427. The photograph just referred to omits a number of details contained on the large map used on the trial of the cause, and for that reason a duly certified copy of said original has been filed with the clerk of this court, and additional photographs have likewise been attached as Appendix III to this brief.

Referring to the survey shown on said map, witness testified that he had commenced making said survey in 1880 under employment from Mr. Richardson, there being present on said survey beside Mr. Richardson, Mr. Green, the predecessor in title to Mr. Richardson, and one or two other parties. Witness testified that he was there again in 1887, and made another survey, at

which time there were present Mr. Brewster Cameron, Mr. Buehman, the photographer, and some other parties (R., 189), Mr. Buehman at that time taking the photographs embodied in the record.

Referring to his first survey, that of 1880, witness testified that he went to the mouth of the Potrero Cañada, because Mr. Richardson took him there, and because while no one knew where the center monument of the grant was, the point on the Cañada del Potrero was well known as the south center of the grant, and on this first survey a measurement was taken from the south center, 200 cords north, in doing which some old ruins near the international boundary line were passed at a distance of 87 chains from the starting point. These evidently were the ruins which the Government witnesses describe as those of Old San Rafael, although witness testified (R., 190) that these buildings were not in ruins in 1875, there being some Mexicans living there at that time. Witness testifies that after running north 200 cords, or 5 miles and 16 chains, some old ruins were reached, and the party thereupon built a small monument there (R., 190). This was evidently the beginning of the pile of stones which Bonillas and others have testified to so confidently as the original center monument of the grant.

Witness testifies that on this survey of 1880 having reached the end of his line 200 cords north from the south center monument, he ran another line of the same length, 200 cords east, but failed to find the east

center monument, and never crossed the Potrero Cañada at all in running this line; he then ran from the center monument, as established by him, 200 cords north, and searched all over the country for the north center monument, taking Saddle Mountain as the Peñasco, because Mr. Scott, who was a member of the party, told them to do so, although witness did not believe that this was the Peñasco, nor did Mr. Richardson seem to believe it (R., 190), the latter apparently taking the Peñasco to be at the point selected by Bonillas as the Peñasco.

Failing to find the north center monument, witness testified that they went to the south center monument, and measured from that point to the southwest corner and San Antonio Pass, and then came up to the red hill which stands out prominently at the end of the Patagonia range, and looking for the northwest corner they found it at the foot of that red hill. In view of the fact that the *expediente* does not call for a monument at that point, and the further fact that Bonillas failed to find one also, and did not even look for one, because the title papers did not indicate that one had been placed there, the enterprise of Roskruge in finding such a monument proclaims his preeminence as a surveyor of Arizona land grants. This preeminence is still further exemplified in his testimony (R., 192) to the effect that the Sonoita Mountains can be seen from the north center monument, when it is recalled that both Bonillas and Cameron state that this is absolutely untrue.

Witness testified that on the survey of 1880 he found no north center, east center, or northeast corner monument, the latter two not being looked for at the time; but that the monument at the carricito, or Igo Spring, was located the next year with Mr. Richardson. (R., 193.)

Coming now to the survey made in 1887, witness testified that he at that time chained the whole grant from the south center to the north center, finding the latter at a tree with a pile of stones around it, and that witness had never been to said point since that time, his going there at that time being at the suggestion of Mr. Brewster Cameron. (R., 194). He found at that place what perfectly satisfied him as the north center monument of the grant, according to the calls of the *expediente*, there being there an arroyo running toward the oak tree *from* the peñasco, as located by Bonillas. As all the other witnesses testify that the arroyo at this alleged north center monument runs to the peñasco, and not from it, it would seem that the one visit made by witness to this point, under the guidance of Mr. Cameron and Concepcion Elias, was not a very thorough one.

From this point witness testifies that he went to the east center monument, which he described to be an old monument built of stone on the west edge of the mesa, stating that from this last point the vicinity of old San Rafael can not be seen. From this point witness went next to the southeast corner, the Jaralito, being the same as the northeast monument of the presidio of

Santa Cruz, at which point witness found a big monument at the Jaralito (R., 194). The force of this testimony of Roskruge as to the existence of a big monument on the Jaralito is somewhat affected as indicating unmistakably the southeast corner by the fact that Bonillas likewise found the Jaralito and a big monument at a distance of a mile or more from the Roskruge monument.

Witness then chained (R., 195) to the south center monument and completed the rest of his survey by triangulation. Referring to El Caloso Hill he testifies that there is not, to his knowledge, any other lime hill in the whole country (R., 195). After identifying some of the photographs tendered in evidence and already discussed, witness testifies to his having made still another survey in the San Rafael Valley, that one having been made in the month of September, 1880, and thus prior to the first survey for Richardson and Green, this survey of September, 1880, being made under directions of Surveyor-General Wasson, and its purpose being to run from the post at La Zanja 200 cords north and then 200 cords west, with a view of determining the location of such a survey with respect to Harshaw and the mineral country adjoining it.

On cross-examination witness testifies that his survey for General Wasson was made subsequent to a certain survey made by one Solon M. Allis, and shown in the record as plaintiff's Exhibit F 74. (R., 463.) Upon that survey Roskruge took as his initial point the post

erected by Allis at La Zanja, and proceeded as indicated by the following questions and answers (R., 197):

Q. About how far is that (the post in the cienega) from the center monument which you took in the survey of 1887?

A. Probably three-quarters of a mile.

Q. It is about three-quarters of a mile north of that center monument of 1887?

A. Yes, sir.

Q. You on that survey run north 200 cords, did you not, in 1880, for General Wasson?

A. Yes, sir.

Q. Or 5 miles and 16 chains?

A. Yes, sir.

Q. Now you found at the end of that an oak tree, did you not?

A. Yes, sir; I came to an arroyo, *on the right bank of which I found an oak tree blazed with a cross on it.*

Q. And you ran from there, you say, 200 cords toward the west?

A. Yes, sir.

It will thus be seen that Roskruge had no difficulty in 1880 in finding an oak tree with a cross on it, and an arroyo running by it, as the end of his measurement on the north, from the Slaven place taken as the center.

Further describing this locality, witness testified that this blazed tree bearing a cross is in the midst of rolling land, and indicated its location by the letter R on the original of his map, F 52, and stated that he reported to General Wasson the fact that he had found that tree on the edge of an arroyo. Witness

thereupon identified the report made by him to General Wasson, with its accompanying map, and these were tendered in evidence on behalf of the Government as defendant's Exhibit No. 1 and No. 2, appearing in the record at pages 467 and 468. A glance at the plat in question, in connection with the report, will show that Roskruge on that survey readily found what a month later he seemed unable to find, to wit, a north center, at a distance from the center of the grant approximately where the original survey says it was.

Just at this point the following quotation from his report, defendant's Exhibit No. 2, page 468, is exceedingly pertinent:

> TUCSON, ARIZONA, *Sep. 7, 1880.*
>
> Hon. JOHN WASSON,
> *U. S. Surveyor-General.*
>
> SIR: In accordance with instructions I proceeded to the San Rafael Valley, and at the place called La Zanja, where Slaven has now a stock ranch, I found a post marked "S. R. Z.," for the center of the San Rafael land grant. From this point I ran north 200 cordels, or 5 miles, 16.66 chains, to a point. At 5 miles and 20 chains I found *on the right bank of an arroyo an oak tree blazed*, the blaze being so old that the bark had grown over it, forming a kind of curtain. *I found indistinct marks on it, which might be easily traced into a cross*—that is, if it was painted, as was the case of the one marking the south center of the Canoa land grant. * * * I ascended a high hill at end of line, and from observation found that a line run due

south would not strike the mineral belt in Arizona, *the grant apparently being intended to cover grazing and agricultural lands only.*

(Signed) GEORGE J. ROSKRUGE,
U. S. Dep. Surveyor.

Witness testified that by this first survey of his, made for Surveyor-General Wasson, Harshaw camp was located a mile and a half to the northwest of the exterior boundaries, there being at that time, as well as at Mowry and Washington camps, also outside of his survey, a large number of mining locations and inhabitants engaged in mining.

Coming again to the survey made in 1880 for Mr. Richardson, witness testified that they adopted Saddle Mountain as the peñasco, because Scott, who was with them, kept saying that that was the peñasco, he having been "misled" into that belief by the people of Santa Cruz. From the testimony of the Government, which will be presently considered, it will be seen that Mr. Scott was not so badly misled after all, and that the people of Santa Cruz, acquainted with this locality for scores of years, and as a result of their acquaintance informing Mr. Scott that this was the *peñasco*, were more probably right in this matter than Mr. Roskruge, despite the latter's inherent conviction that this was not a *peñasco*. Even Roskruge, however (R., 199), admits that this Saddle Mountain, against which he seems to have conceived so violent a prejudice, is a very high, steep mountain, three hundred or more feet in height, and in this impression he is sustained by Bonillas, who

admits in his testimony, as above pointed out, that the Saddle Mountain so called, looks like a *peñasco*. Roskruge further admits (R., 200) that the *peñasco*, contended for by Bonillas and himself, is not visible from the south center of the grant, whereas the *peñasco* contended for by the Government is visible throughout the whole valley. The consistency with which Roskruge on this map of 1880 adhered to the position that the newly called Saddle Mountain was the peñasco, is shown by his cross-examination (R., 220–222) and the field notes of his survey, introduced as defendant's Exhibit 5. (R., 472–476.) The character of that cross-examination is exemplified by the following (R., 221):

> Q. From your notes I read the following bearings: north 57 degrees 4 minutes west from red mountain, peñasco. Is that the same Saddle Mountain?
>
> A. That is the same mountain.
>
> Q. I read as follows: Richardson and Scott, 11 a. m., on horses, went to arroyo draining toward the peñasco; is that the same as this Saddle Mountain on your map?
>
> A. That is the same one; yes, sir. * * *
>
> Q. I read again: R. R. Richardson went to top of peñasco; is that the same as the Saddle Mountain you got there?
>
> A. Yes, sir; the same Saddle Mountain. * * *
>
> Q. Again I read: The peñasco bears south 67 degrees west; is that the same Saddle Mountain?
>
> A. The same Saddle Mountain; yes, sir.
>
> Q. I read again: Red mountain distant from

the peñasco about 2 miles; is that the same Saddle Mountain?

A. Yes, sir; the same Saddle Mountain.

Q. I read again: Another arroyo that runs toward the peñasco; is that the same Saddle Mountain?

A. Yes, sir; the same, marked on that map.

Witness admitted (R., 221) that his field notes (R., 475) showed that he found on that survey near Roth's camp, which is at the head of the Santa Cruz Valley (see defendant's Exhibit No. 6, R., 476), a ravine or valley that drains toward the peñasco, and at which was found a pile of stones 3 feet high and 3½ feet at the base with three large oak trees near them, but no mark on either of them. Witness indicated this point on the original of his map (plaintiffs' Exhibit F 52) by the letter G, and he stated that the oak tree is near that point (R., 221). It would seem that this location very closely conforms to the description given in the *expediente* for the north-center monument, there being at this point an oak tree, a large pile of stones, both of them on the side of a valley or ravine draining toward the peñasco, or Saddle Mountain.

Further referring to the field notes of Mr. Roskruge (R., 476), being the result of his survey in October, 1880, it will be noted that the red mountain selected by him as his northwest corner lies between the peñasco or Saddle Mountain and the Sonoita Range, all three of which, from said field notes, were apparently visible to Mr. Roskruge on that survey. This location of the northwest corner is superior to the Bonillas

location, at least in this respect, that the red mountain is here described as visible between the objects named in the *expediente*, whereas in the Bonillas survey neither the Sonoita Mountains nor the true peñasco are visible.

On redirect examination (R., 202), referring to the Wasson survey of 1880, witness testified that there were no rocks at the bottom of the blazed tree, at which his line, 200 cords in length, ended, and that the arroyo at that place runs from northwest to southeast, and does not run either toward Saddle Mountain or toward the Peñasco, and witness testified (R., 219) that it is the universal rule of construction by surveyors that the language in the title paper to the effect that an arroyo runs toward a certain place, refers to the way the water flows; that a road or fence runs two ways, but a river or arroyo runs but one way—that is, the way the water flows. Witness showed, however (R., 203), that this Saddle Mountain is northwest from the oak tree, and this arroyo runs from the northwest, and his map, Government Exhibit No. 1 (R., 467), shows the same thing, and shows an arroyo running in the same direction as the Peñasco While it may be true that the expression "an arroyo running toward the Peñasco" ordinarily means that the Peñasco is down stream on said arroyo, where, as in this case, there are found at a given point all the other natural conditions complying with the call of the *expediente*, it requires no perversion of language to construe the words "toward the Peñasco" as being up the arroyo, since the point of

observation at the oak tree was that of a person looking up a dry channel coming by the Peñasco, and thus in a certain sense toward it. Even if, however, the arroyo that Roskruge indicates on his map be construed not to conform to the *expediente*, in that it runs from and not toward the Peñasco, the other arroyo referred to in his survey of October, 1880 (R., 475) confessedly drains toward the Peñasco or Saddle Mountain, as does the arroyo testified to by Mr. Cameron and hereinbefore discussed.

Witness testified (R., 203) that in running from the blazed tree 200 cords west, his line ended 3 or 4 miles from the red mountain. Witness also testified that on his survey of October, 1880, he found no arroyo in the vicinity of the horse corral that runs either toward Saddle Mountain or the point marked peñasco, but that they all run toward the south; and to this effect he read from his field notes of that survey showing a search by the surveying party for the tree with the crosscut upon it, a monument of stones, and a small arroyo draining toward the Peñasco, this search having been made in the vicinity of the end of 200 cords from the center monument, and resulting, according to the field notes, in a failure to find such natural objects. He further testified that on the survey made for Mr. Richardson he did not go to the blazed tree which he had found on the Wasson survey, for the reason that the information was too vague about that tree and the marks, there being nothing to his mind to indicate that it was *the* tree. He testified that the blazes had been

cut there a long time; and apparently for the purpose of showing that this blazed tree which he located in 1880 for Wasson could not be the tree constituting the north center of the *expediente*, he was recalled (R., 231), and gave testimony as to his having had occasion to cut down oak trees in order to discover whether they bore marks on them that had been placed there years before by surveyors. He produced in court a piece of wood to show that in some instances the marks made on the outside of the bark disappear and are found internally, the mark in the particular instance shown by said wood having been made in October, 1874, and having been found on the inside of the tree upon its being cut some years later. Despite this testimony, the fact still remains that Roskruge reported to Surveyor-General Wasson an oak tree 200 cords north of the La Zanja, with a cross upon it, as the apparent north boundary of this grant, and based upon such discovery even made observations to the effect that this was a grant apparently intended to cover only grazing and agricultural land (R., 468); and even Bonillas, in an excess of caution and in order that his north center monument, 6 or 8 miles from the first Roskruge north center, might appear to be equally worthy of confidence, took the pains to mention in his testimony (R., 101) that he found there "a very large big oak tree with *some scars on the trunk* and a pile of stone around it." It seems a pity that, after Bonillas had gone to the trouble to mention in his testimony the existence of some scars

on this oak tree, claimants should have proceeded to introduce testimony tending to show that these scars could not possibly have been placed there at the time the grant was originally surveyed. Roskruge also testified (R., 196), referring to his east center monument, that the mesa on the east of the Cañada del Potrero runs north and south for a considerable distance from the east center monument. This testimony is relevant in that the only description in the title papers as to the east center monument is that it is located beyond the Potrero Cañada on a mesa contiguous thereto where a pile of stones was placed. As the canyon or cañada is miles in length, and the mesa east of it is likewise miles in length from north to south, absolutely the only object fixing the east center at the point claimed by Bonillas is a pile of stones, with no testimony whatever to the effect that such pile is the ancient east center monument, but on the contrary with abundant testimony on behalf of the Government to the effect that such stones were placed there about the time of the survey made under the auspices of the Camerons. With such an uncertain object as a pile of stones to fix this monument, especially in view of the doubtful origin of this object, the duty of the court will be to fix the east center of the grant at the first point of the mesa east of the Cañada Potrero, and on a course due east from the center monument.

Claimants also introduced in evidence (R., 203), pages 427–431, the testimony of witnesses José María Montoya, Alejandro Apodaca, Jesús Dominguez, and

Xavier Dominguez, taken before the surveyor-general (the witnesses being dead), (R., 91) to the effect that they had always known the ranch of San Rafael de la Zanja since it adjoined the pueblo lands of Santa Cruz, their ancestors having been among the *parcioneros* of the grant, and having participated in the cost of its purchase; that said ranch was occupied by the people of Santa Cruz for cattle and for residences at an early date, but was abandoned by the people on account of the hostile Indians; that the south center of the grant had always been known as at the mouth of the Cañada del Potrero; that from the center to the south line of the grant there is running water in the aggregate for more than half the distance; that the heirs of the *parcioneros* and of Ramon Romero, the party named in the title papers, had always acted in harmony in the administration of said property, having paid a considerable amount to the American Government as taxes, the proportion paid by each being according to the amount of stock each had upon the grant, and, finally, that there was mineral within the grant, at the Patagonia, Washington, San Antonio, and other mines.

Concepcion Elias, sworn on behalf of plaintiffs, testified as to his having resided all his life at Santa Cruz, Mexico, and gave his age as 68 years; that he had always known the San Rafael de la Zanja grant, his father having been one of the *parcioneros*, and having paid part of the purchase money (R., 203, 204); that he knew Ramon Romero, the only one of the *parcioneros* named in the title papers; that the

latter lived at Santa Cruz and went to California and never returned; that at his earliest recollection the ranch of San Rafael de la Zanja was settled and various people were living on it, and that witness himself subsequently lived on the ranch or grant; that there were as many as 20,000 head of stock on the ranch when witness first knew it and for years subsequent thereto (R., 204, 205). Being asked if he knew any of the corners of the grant, witness testified that he knew four, to wit, El Carricillo, the Cerro Colorado, San Antonio, and Jaralito Being asked as to whether he knew the south center monument, he replied that it was a peak that rises above the Washington camp between the south and east (R., 205), a very evident mistake, due either to indifference or lack of knowledge of the subject about which he was attempting to testify. Witness testified that he knew the monument at the mouth of the Potrero and was the person who had shown it to Bonillas as a monument of the grant; also that he knew San Antonio pass; that it had always been so called; that he knew the monument of the San Rafael grant located at two small peaks near that pass, and that he had shown it to Bonillas as a monument of the San Rafael grant, because the old people, including his father, had told him that the lines of the ranch reached there and at that point joined the lands of the neighbors and also the commons of the town of Santa Cruz (R., 206), and that said commons also reached up to the monument at the mouth of the Potrero Cañada.

Witness testified that he knew the place of La Zanja and also the old ruins of San Rafael, and that the latter were about six or seven hundred yards from La Zanja, and that he was informed that this place of old San Rafael is that at which the owners of the grant settled originally, it having been abandoned on account of the Indians (R., 206). It will be noted, however, that "San Rafael" is referred to in the title papers as marking the center point and as thus existing at the date of the grant, so that this point of settlement by the owners of the grant could not be the place named in the title papers.

Witness testified (R., 206) that the ranch or grant extended toward the north to what they call Carricito, joining the Babacomori ranch to the north, Carricito being at the edge of the Cobre Mountain at the spring where Mr. Igo lives, and that said copper mountain is a portion of the Huachuca Mountains. Witness testified (R., 207) that that spring was commonly called *Carricito* by the old people, the owners of the ranch.

Being asked to describe the north center monument, which it will be recalled was not located by tradition among the people of Santa Cruz, but by the importation of Mr. Hopkins from San Francisco, witness fixed it at a place where there is an oak tree with a monument at its foot, and that from it the red mountain can be seen in an opening between two mountains and that this tree is on the edge of an arroyo running *to the east.* Witness then corrected himself (R., 207) to the extent of stating that this arroyo runs *to the north*, and afterwards under the guidance of a leading question stated

that it ran toward the Peñasco, which it will be recalled is toward the southwest.

Witness describes this *Peñasco* as being a high very yellowish round-like peak, and that it was called by the old people of Santa Cruz the "Peñasco of Sonoita, because it runs to Sonoita."

Referring to the east boundary of the grant, witness testified that it is in the "draw of a very high table-land on the east side of the center point," and that he had known this monument of the grant for many years from the owners of the grant themselves, whether the Camerons or others does not appear.

As bearing on the tradition connected with the extent of this grant, the following from the testimony is relevant (R., 208, 211):

> Q. What part of this land within the monuments of the land you have designated did the owners occupy?
>
> A. I do not know what part; *they used to say it comprised 4 sitios.*
>
> * * * * *
>
> Q. How many sitios were there in this grant according to the old people down there?
>
> A. *They said there were 4 sitios;* I do not know myself.

Witness testified that the owners of this land pastured all over the valley between the four points he had mentioned and running to the Babacomori lands and lands of Terrenate (R., 208), and that at the place called Coches, which is on the north slope of the Canelo hills, the people from Babacomori and from Santa

Cruz used to hold round-ups (R., 384), after which "the cattle of the Babacomori people they used to take toward the Babacomori and the cattle of the Santa Cruz people they used to leave in the land."

Witness referred to the extent of Indian hostilities in the early days as having led to the abandonment of the ranch, but said that such hostilities did not exist after the establishment of the international boundary line (R., 208); and that during the French invasion Governor Pizcarra had lived on this ranch, near the international line; that there were no ruins in the San Rafael Valley, except at new San Rafael and old San Rafael, the latter being near Slavens's place and new San Rafael being at Viviano's place, which, according to Roskruge map F–52 (R., 427), is on the east side of the river, about a mile and a half from the international line.

Referring to the peñasco, witness testified that this could be seen from the valley of San Rafael as far down as the international line. Since the testimony of the other witnesses shows that Saddle Mountain can be plainly seen along the whole valley, while the alleged peñasco can not be so seen, it would seem to be evident that the peñasco referred to by witness Elias is, after all, the natural object which the Government testimony shows to be the true peñasco.

Witness stated that his visits to these various monuments with Roskruge and Bonillas and others had been under the employment of Mr. Cameron, who had hired him to go around to these monuments (R., 212); and referring to the town of Santa Cruz he stated (R., 213)

that it had for twelve or fourteen years been governed by an *ayuntamiento*, but prior to that time it had none, there being only a justice of the peace there.

COLIN CAMERON, one of the plaintiffs, being recalled (R., 214), testified as to the topography between the south center monument and the southeast corner of the grant, and to the effect that in going between these points one passes over mesas and arroyos and broken country until Bonillas's southeast corner is reached, at which there is located the Jaralito; that the first time he had been to this corner was in the summer of 1883, when a considerable amount of *jaralitos* were to be seen within 200 yards of the monument of Bonillas.

On cross-examination witness was shown the map made by Roskruge and the letter written by Mr. Rochester Ford to the surveyor-general of Arizona accompanying that map (R., 468, 472), and stated that Mr. Ford was his duly authorized attorney at that time. It will be noted from this letter that Mr. Cameron's position then was (R., 469) that "the lands specifically and definitely claimed" by him are "the lands represented in the accompanying map of George J. Roskruge and are the same lands sold by the Mexican State of Sonora, according to the title papers of the San Rafael de la Zanja grant," and that this survey of Roskruge, which Mr. Cameron, through his duly authorized attorney, says is a correct representation of the grant in question, fixes the southeast corner of the grant and the Jaralito miles away from the point adopted by Bonillas.

HENRY BUEHMAN, presented by claimants, testified (R., 215–218) to the correctness of the photographs tendered in evidence by plaintiffs and to the effect that the monuments shown therein appeared to him at the time the photographs were taken to be old monuments, because there was grass growing right through the rocks.

IGNACIO BONILLAS, being recalled on behalf of plaintiffs, testified (R., 222–225) that in his opinion the expression, "arroyo running toward a given object," means that that object is in the direction in which the water runs or flows; and that the water from the north center seems to run directly toward the peñasco, as located by him, but it does not run directly toward Saddle Mountain, that being considerably to the south of the peñasco.

Referring to the grants surveyed by him in Mexico and in which large excess of area surveyed over area granted was discovered, and a list of which as furnished by witness has already been discussed, witness defined *demasias* and legal area as follows (R., 225):

> Q. You gave in each case the *cabida legal* and the *demasias;* that is, the quantity of land purchased and paid for as shown by the title papers, is it?
>
> A. Yes, sir.
>
> Q. And the *demasias* is what?
>
> A. The excess of area found within the monuments established after deducting the *cabida legal* from the total area.

Witness states that these surveys were made by him

under the Mexican law of 1863 and the laws amendatory thereof; that to ascertain the amount of public land the Government employed persons to make surveys of public lands and *demasias*, and gave them as compensation one-third thereof (R., 26); that in some instances it was found that the *demasias* had been absorbed by the concession, and that in one instance, the Cuchuta grant, the concessioners in surveying paid no attention to the monuments bounding the grant, but simply to the *cabida legal* or legal area (R., 227).

Witness admitted that a denouncement of that portion of the San Rafael de la Zanja grant lying south of the international line had been made in 1886 by Mr. Concepcion Elias, under the name of the Encinitos tract (R., 227), it having been petitioned for as public land (R., 235), and that witness was now the owner of that tract (R., 227). Witness Concepcion Elias testified to the same effect (R., 385).

Over objection from the Government that it was incompetent to prove the contents of a written decree by parol evidence, Bonillas testified that some judge of the first instance at Magdalena had issued a direction to the district judge at Guaymas to issue the decree or decision to the effect that Green was entitled to all of the lands of this ranch to the outside boundaries, or rather that witness thought that was the fact (R., 228), but that witness now held the title to that portion of the grant south of the international line deraigning not through Mr. Green, but from the Government. In connection with this matter witness offered the following explanation (R., 228):

Q. Did you deraign from the Government?

A. Yes, sir. I would like to explain, if you will allow me. I think there was an application made for a survey of the Encinitos. The publications were made summoning the owners, those that might have any claim to those lands, to appear and show why no such survey should be made. Nobody appeared; nobody claimed the lands; consequently the Government, believing that it was its own land, issued title to it.

These proceedings recited by Mr. Bonillas, disposing as they do of all of this San Rafael de la Zanja ranch lying in Mexico as public land by that nation, are very instructive as showing what would have been the character of the title held by the claimants to so much of the land within the outboundaries beyond the 4 sitios actually paid for, were this territory still a part of Mexico.

Mr. Bonillas also referred to the law governing the location of the *cabida legal*, as disclosed by the expediente of the resurvey of the Chupisonora grant, where the State surveyor says: "Article 4 of law No. 197, of the 14th of May of the present year (1852), leaves the selection of the land to their titles to the possessors" (R., 234). Witness stated that from this *expediente*, which is in the archives at Hermosillo, it appears that when the surveyor was going to locate the *cabida legal* he cited this law and summoned the owners so that they might make the location. Witness stated that he did not know whether this was a State or Federal law. The contents of this law, a copy of which has been

since the trial secured from the archives at Hermosillo and is attached to this brief as Exhibit B, will be hereinafter discussed. It is sufficient at this stage to state that the purport of the law is correctly cited by Bonillas, and that under its terms the right of grant claimants consisted not in a definite tract of the quantity paid for within the out boundaries of their grant, but rather of the right to select such quantity within said out boundaries. This law throws considerable light upon the system of administering lands under the Mexican Government, and is extremely relevant as bearing on the question of whether this grant at the date of the Gadsden treaty had been "located" within the terms of that international instrument.

COLIN CAMERON, being recalled (R., 229), testified that the inclosure marked "Cienega pasture" on plaintiffs' Exhibit F–52, being in the northeast portion of the grant as surveyed by Bonillas and Roskruge, contains about 600 acres inclosed by a wire fence, and is the same tract of land involved in the case of *Cameron* v. *United States*, being No. 1180 in this court, October term, 1889, and being reported in 148 U. S., 301.

Being asked as to the topography of the country to the north and northwest of the center monument (R., 229), witness testified that the water from Saddle Mountain flows northwest: that there is a ridge about 200 cords north of La Zanja, above the sheep corral and between that point and the horse corral, as indicated on the Roskruge map, Exhibit F–52, and that none of the arroyos on the south side of that ridge run toward Saddle Mountain, but that all run south. It will be noted,

however, that witness does not modify his former testimony that there is from the vicinity of this horse corral, and presumably north of this ridge just referred to, a drain that carries water directly toward the Peñasco, turning thence south and running into the Santa Cruz River.

Referring to the north center located by Bonillas, witness testified that the arroyo running toward the peñasco at that point does not run toward Saddle Mountain, but runs more north than that object (R., 230), and that Saddle Mountain can not even be seen from anywhere in that vicinity, and that even the peñasco, located by Bonillas, can not be seen exactly from the north center monument (R., 230), and finally that Cottonwood ranch is near the northwest corner, but outside of the grant as surveyed by Bonillas (R., 231).

As bearing on the question of whether in asking for this grant originally it was ever the intention of the original petitioners to secure that portion of country lying north of the divide on which Saddle Mountain is situated, the testimony of Cameron (R., 230) is instructive in showing that the country lying north of this divide and between the north center and the northwest corner, as located by Bonillas, is so very rough that it is impossible to get through with a wagon. Witness being asked what was the condition of the country going from there, as to its safety in Indian times, answered: "Nobody would go there—it would be very dangerous indeed." The testimony of the witness

as to the topography of the country between the north center and the northeast corner (R., 230) shows that this section of country is similarly rough, and throws strong light upon the improbability of there having been any attempt made by the original grantees to secure any land other than the Santa Cruz Valley proper, with its abundant water and splendid pasturage.

In conclusion of their case in chief, plaintiffs tendered in evidence (R., 235) extracts from the record in the case of *Cameron* v. *United States*, No. 1180, October term, 1889, Supreme Court of the United States, above referred to; also the decision and mandate of this court in that case. These papers appear in the record at pages 450-458, and were offered in support of Cameron's plea of *res judicata* set up in his answer and hereinbefore referred to. The legal effect of these proceedings, taken in connection with the decision in that case (148 U. S., 301), will be hereinafter discussed.

STATEMENT OF DEFENDANTS' TESTIMONY.

R. R. RICHARDSON, sworn on behalf of the Government (R., 235), testified that he had lived in southern Arizona since April, 1880; had held official positions in his county, and had been engaged during his residence in cattle, stock, and mining business. He described the mining camps included within this grant as surveyed by Bonillas: Harshaw having been a camp when he first went there, having some 500 or 1,000 people with a large number of mining locations, and the same being true of Washington and Mowry camps (236, 237). He gave the value of some of the mining claims within the

Bonillas survey as follows: That of the Duquesne group being $350,000; the Pride of the West, $125,000; the Holland, from $50,000 to $100,000; the Pool group, $60,000; the Empire, $40,000; the Belmont, $100,000, and the San Antonio, $75,000; and stated that the country all around these camps was mineral bearing.

Witness testified that when he first came to the premises in 1880 he found a man named Slaven living at La Zanja, but that there were at that time no monuments of stones in that vicinity; and that the San Rafael ruins were at the old Enriques place, which, it will be recalled, is about 3½ miles south of the center monument as located by Bonillas. (R., 238, 239.)

Coming to his acquiring an interest in the land, Richardson testified that he first met Mr. Green, the plaintiff, in Tucson in the summer of 1880, when he entered into a contract for the grant with him, paying him in all $7,000; that Green showed him what the grant was, and he then bought out Green and one or two settlers. Referring to the monuments shown him by Green, witness stated that there were pointed out to him a monument at San Antonio Pass as the southwest corner, being a pile of stones at two small hills; also the south center monument, being a pile of stones not over 2 feet high, and that these were all Green showed witness, although they searched for other monuments (R., 241) at Igo's and elsewhere.

Witness testified that looking up the valley there is a very prominent peak to the northwest visible from

almost anywhere in the valley; that this peak is a very abrupt one and stands alone, and has always been known by him, both upon information given him by Mr. Green and other people who lived there, as the Peñasco, and witness never heard any other name given it until the trial of this cause. Witness denied that he had ever been on top of this peak with Mr. Cameron, or had ever told him that that peak was Saddle Mountain and not the Peñasco, or that he had ever had any conversation with him about it; that he had never heard the peak marked Peñasco on the Roskruge map called the Peñasco, but, on the contrary, he always heard the so-called Saddle Mountain called Peñasco, and that he told Roskruge on his survey that the peak marked Saddle Mountain was the Peñasco.

Witness testified that going north 200 cords from La Zanja he had not found any tree with a cross on it, but had found about 8 miles from La Zanja that the water runs toward the peñasco and then turns and comes back into the Santa Cruz, and that this is true as to a point directly east of the windmill held by Mr. Cameron and shown on the Roskruge map (R., 243); that the peñasco is on the watershed or divide between the Sonoita and Santa Cruz rivers, and that the water running from the upper part of the valley runs south of the windmill of Mr. Cameron, returning to the Santa Cruz River and striking it 3 or 4 miles north of La Zanja. Further describing the topography at the extreme upper end of the Santa Cruz Valley (R., 244), witness testified:

Q. Is that country covered or interspersed—scattered with oak trees?

A. Yes, sir.

Q. Are there level table-lands cut by gullies, table-lands called mesas?

A. Yes, sir.

Q. These mesas or table-lands are full of gullies?

A. Yes, sir.

Q. Is there such a place 300 or 400 cords north of La Zanja, or 6 or 8 miles north of La Zanja, a gully that runs to the peñasco, as you call it?

A. Yes, sir.

Q. And are there oak trees on the mesa?

A. Yes, sir; I think so; oak trees around the center of it.

Describing the Canelo Hills, witness stated that they were a very rough range, with only one pass through them, and that they joined the Huachuca Mountains just north of Tanners Pass, where a man named Campini has some copper and silver mines, and that at this junction of the Canelo and Huachuca mountains there are some nice springs, the waters of which flow into the Potrero Creek. (R., 244, 245.) The testimony of Mr. Richardson just quoted shows the existence at the east end of the Canelo range of all the natural objects used in the *expediente* to describe the northeast corner of the grant.

Coming to a description of the northwest corner, witness testified (R., 245) that looking toward the west from a point 6 or 7 miles east of Saddle Mountain,

there can be seen a red mountain down in the valley between the Saddle Mountain and what they called Harshaw; that the general color of that range of mountains is red, extending as far south as the Mowry Gulch; that there are red hills between what is called by Bonillas the Saddle Mountain and the peñasco, and that the Sonoita Mountains lie west of the so-called Saddle Mountain and peñasco.

Witness further testified that when he sold out to Cameron he merely transferred his agreement with Green (R., 246), and that he never showed Cameron a monument at Igo's or at the center, as testified to by Cameron, and in fact he never saw one at either place (R., 246). On cross-examination witness stated that there had been considerable bad feeling between him and Cameron at different times; that at the time he transferred to him they spent five or six days on the grant, and passed the red mountain at the northwest corner of the Bonillas survey, which they both took to be the northwest corner, as represented by Green and the expediente; that witness accompanied Cameron to the San Antonio Pass and showed him there the monument that was pointed out by Green and the people of Santa Cruz as their monument, and also took him to Carricillo Spring and told him that that spring was the one called for in the title papers, but witness is confident that he never showed him a monument there; that at that time the north center monument was not pointed out to Cameron, since its location was not known (R., 247), and that while at the time witness sold to Cameron he

showed him the points that had been pointed out to witness by Green, he did not represent to him that Cameron would get the mountains, as he never thought that the mountains would go with the grant, but witness admitted that in transferring the grant to Cameron he had expressly reserved the Marshal mine in which he was interested (R., 248, 249)

Witness testified to having employed certain Washington attorneys to represent him in getting a confirmation from Congress, and identified a copy of a letter to them and also a number of other letters bearing on this transaction (R., 249, 250), said letters being found in the record at page 458 et seq.

Referring to the appearance of the country, looking from a point at the head of the Santa Cruz Valley, witness testified that from such point the peñasco identified by Bonillas (R., 248) can not be seen, nor can said alleged peñasco be seen by one looking toward the north from the alleged center (R., 252); but that looking west the peak near Washington camp, which plaintiff claims is El Caloso, is a very prominent landmark, although the title papers say that El Caloso is a low hill.

V. H. Igo, being called for the defense (R., 252), testified as to his having gone to that country about 1882, when he settled at a spring at the point of the Huachuca Mountains, buying out a man named Haines, then living there under a possessory title (R., 257). Witness testified that he developed the property, making improvements that had cost in the

aggregate about $8,000 or $10,000, and that there were a number of other settlers in the canyons situate within the grant on the north slope of the Canelo hills (R., 252); that when he went there, there were no evidences of a grant, no monument, claim or boundary marks (R., 253–4), and that the monument near his spring and shown on the photograph introduced as Exhibit 37, was not there when witness went there to live, but was put up in 1884 or 1885. He testified that he saw it the next day after it was built, there being present on this occasion Colin Cameron, McLaughlin, the surveyor whom Cameron at first denied having employed, and subsequently, as above pointed out, admitted that he had employed and paid, and also a number of other parties. Witness recalled the circumstances of the building of this monument apparently with great distinctness, from the fact that the episode was marked by hot words on both sides, accompanied by the attempted use of a gun (R., 254, 255).

Witness remembered the survey of 1886 or 1887, when Roskruge was there accompanied by Brewster Cameron. He fully identified the so-called Saddle Mountain as the true peñasco, and stated that he had never known any other name for it; said that he did not know the Mexican name of the spring at which his ranch was situated, but that the mountain at that place was called Huachuca and he never heard it called Sierra del Cobre, or indeed heard of any copper in that range nearer than about 8 miles south of his place

where Campini is located, and at which point there is a large spring (R., 255, 256). Witness further testified that the Bonillas monument is a mile and a half east of his spring and on lower ground than the spring. Since the title (R., 528) shows that this monument was *above* the spring known as Carricillo and not below it, is evident that Plaintiff Cameron and Surveyor McLaughlin in building this monument in 1884 used poor judgment in selecting the location for it.

On cross-examination (R., 257) witness gave further details as to the building of this monument, stating that he saw the parties piling the rocks up (R., 258) and indeed carrying the rocks for the purpose of constructing the monument'(R., 259); that the monument is higher now than it was then, and that when he first became acquainted with that country there was a wagon road along there running from Huachuca to Harshaw and Santa Cruz Valley, and that at the time he secured this spring there were no *carricillos* or *tules* at the spring.

Witness testified (R., 260) that he had bought some shares in the grant in 1884 in order to protect himself in case the grant claimants took him in. His documents showing acquisition of title appear in the record as defendants' Exhibits 12 and 13 (R., 486–489).

GEORGE J. ROSKRUGE (R., 261), recalled for further cross-examination, testified that the high hill on which United States mineral monument No. 2 is situated is located at the Alta mill site shown on plaintiff's Exhibit F–52, and that said hill is as prominent as Saddle Mountain.

The relevancy of this high hill at Alta mill site as bearing on the northwest corner will be noted hereafter.

JAMES FINLEY, called on behalf of the Government and as a witness in his own behalf, being one of the codefendants (R. 262), testified that he went to Harshaw in March, 1880, and engaged in mining, and that Harshaw at that time had 250 or 300 people and covered 2 or 3 miles, including a great many mines and locations. Witness then named some of the principal mines and mentioned the amount of development on them, and stated that he was the owner of the Alta mine, which is inside of the survey, and that the peak near the Alta mine, on which mineral monument No. 2 is located, is yellow and red. Witness testified that when he went there there were probably a hundred people engaged in mining in Washington Camp, there being 200 or 250 people there now similarly engaged, with investments in that vicinity of something like $800,000. He testified that he was familiar with the headwaters of the Santa Cruz River, and that looking northwest from La Zanja or Slavens's place, the so-called Saddle Mountain can be seen as a sharp peak, but that this natural object has always been known in that community as the Peñasco; that he knew the place now claimed as the center of the grant in the early days, but had never known it to be called San Rafael, and that he never saw a monument of stones there when he first went there (R., 266). He testified that going north from the center 6 or 8 miles the general trend of the

country is to the west, but that the water courses "zigzag around" as they go in different directions.

Bearing on the topography at the north end of the San Rafael Valley, witness testified as follows (R., 267):

> Q. Have you been up 8 or 10 miles north of the Slavens' place?
>
> A. Seven or eight years since; yes, sir.
>
> Q. What is the character of the country as to forage, trees?
>
> A. Up on the sidehills you find oak trees and juniper.
>
> Q. How about the water trend up about that point?
>
> A. The gullies all trend to the west and toward peñasco; from the north they trend directly to the west.

From the testimony just quoted, it will be seen that at the north end of the valley there are arroyos trending to the west in a broken or mesa country covered with oak trees, thus answering all the *expediente* calls descriptive of the north center monument.

Witness testified that he had never heard of any Sierra del Cobre or copper ridge, nor seen any copper out toward Huachuca, which it will be recalled is a military post in the north end of the Huachuca Mountains; that there was no monument at Igo's when he first went there (R., 267); and witness is positive that there was no monument there from 1880 to 1882 (R., 268).

On cross-examination witness testified that the Sonoita hills or mountains are the northern end of the

Patagonia range (R., 267). It will be noted from a reference to the original of plaintiff's Exhibit F 52, that the high hill on which Mineral Monument No. 2 and Alta mill site are located, which is a red hill (R., 263), lies between Saddle Mountain, the true peñasco, and the north end of the Patagonia range, which Mr. Finley fixes as the *locus* of the Sonoita hills or mountains, thus making this hill answer precisely the descriptive call for the northwest corner given in the *expediente*.

Julius Kunde, sworn on behalf of the Government (R., 271), testified that he had lived at Lochiel, within the grant as now claimed, since 1893, but had lived on the grant ever since 1879; that he worked for claimant Cameron as foreman for thirteen years (R., 364), and that during that time he had been in the occupation of riding the range constantly; that when he first came there he learned from the Mexicans at Santa Cruz the location of the peñasco, which is a point which can be seen from the mouth of the Cañada del Potrero as well as the place called La Zanja, and looks like an abrupt bluff, this point being the same place marked by claimants Saddle Mountain, and that no other point had ever been called peñasco. Referring to the other point alleged to be called peñasco, witness testified that it can not be seen from La Zanja, being cut off by ridges and arroyos, as it stands lower than the so-called Saddle Mountain, and is 2 or 3 miles over on the Sonoita side of the divide between the Santa Cruz River and the Sonoita River, on the crest of which stands Saddle Mountain or the true peñasco (R., 273).

Referring to the topography of the country in the neighborhood of horse corral as located on the Roskruge map, Exhibit F 52, witness testified that said corral was on the slope of the Canelos; that the Canelos are very rough and high, being passable through only one or two passes, and that the country from the horse corral to the northwest is a rolling mesa until one gets to the divide on which the peñasco stands, when the country becomes again very rough.

Being asked as to arroyos in the direction of the peñasco (R., 274, 275), witness testified as follows:

> Q. You know where this arroyo or this wash is that Mr. Cameron has laid down here, do you, at the horse corral, in pencil, runs westward and turns down toward the Santa Cruz?
>
> A. That arroyo that comes over the road, you mean?
>
> Q. Yes, sir.
>
> A. That is the same arroyo that is between the Santa Cruz River, that comes to La Zanja ranch—it comes near there.
>
> Q. Does it run west?
>
> A. It only runs west about half a mile, and then it runs south a little; then it turns and goes toward the Santa Cruz.
>
> Q. Where it runs west does it run toward the Peñasco?
>
> A. Yes, sir; toward the Peñasco for about two miles, a little above the Frazier mine to the west, and then makes a turn at the horse corral, and then turns off into the Santa Cruz River, the valley; but it is dry up there in the dry season.

Witness then explained that the Frazier mine is west of the Canelo hills, and about 3½ miles east from Saddle Mountain or the Peñasco, and that this arroyo starts from the Frazier mine and runs toward the Peñasco for about 2 miles, and that there are some oak trees where this arroyo runs toward the Peñasco (R., 275). He also testified that he was acquainted with the San Rafael ruins, they being about 3 miles below Slavens, and a little over a mile from the international boundary line; that there were two San Rafaels, one San Rafael de la Zanja, at Slavens, and about a mile north of the center monument claimed by Cameron, and the other old San Rafael at the place above named, the latter being so called by the Santa Cruz people. Witness testified that the old ruins at Cameron's were all grown over with grass, with *metates* or Indian grindstones over the ground, and that the old Santa Cruz people did not know who had lived there in former times, and that while he knew the pile of stones now claimed as the center monument, there was no monument there when he first went there, and that he first noticed the monument in 1883 or 1884, after Cameron came there, when it was smaller than it is now (R., 276–278). Witness stated that he first went to Igo's in 1880, and had been there a great many times since, being familiar with the country; that he had seen the northeast monument claimed by Cameron, it having been pointed out to him by the latter, and that when he first knew that country there were only two or three rocks there together at that point, but that they marked a mining location

(R., 278–279), and that this became a large monument in 1884, when McLaughlin made his survey; that he had never heard the north end of the Huachuca Mountains, at which this monument is located, called the Sierra del Cobre, nor heard of copper ever being found in the Huachucas at Igo's place, but that it had been found at the south end of the Canelo range, where Tanners Pass goes through, being 10 or 12 miles south of Igo's place, at which place there are also found two springs, forming a kind of *cienega*, where he had heard that the Mexicans in olden times had found copper, and that this place was about 3 miles from the end of said Canelos, and less than 20 miles from La Zanja; that there were no *carricillos* or *tules* at Igo's spring when witness first came to that country (R., 283–285), and that said spring at Igo's was higher than the pile of stones constituting the alleged northeast monument (R., 290).

Witness testified that he had been at the northwest corner, as located by Roskruge, and had himself built up a monument there at the place where J. W. Leak, one of the Government witnesses, formerly resided; that he had seen a great many monuments, or piles of stones, when riding through that country, and of the same kind as those around San Rafael grant, they being found most everywhere. (R., 281.)

Referring to the water supply in that country in 1879, as throwing light upon the alleged dry sitios testified to by Cameron and his witnesses, witness testified (R., 282) that when he went out there in 1879

there was much more water to be found than at present, a number of springs having dried up. He gave a list of some of the springs on the east side of the river, and mentioned the fact that there was permanent water to be found in what is laid down as the home pasture on Roskruge's map, Exhibit F–52, this spring being called the Saucito (R., 288), which home pasture is within the alleged dry quarter.

On cross-examination (R., 285) witness referred to the fact that in driving cattle from San Rafael to Babacomori and Tombstone parties go through the Canelo pass, which, it will be recalled, was fixed by plaintiffs' witness Angel Elias as the north limit of this grant according to the tradition of the original settlers (R., 29, 30). Referring further to the Peñasco and the arroyo running toward it, witness testified (R., 290) that the so-called Saddle Mountain looks like a *peñasco* from the south, and that it had never been called *picacho*, but always *peñasco*, and that said arroyo running toward the Peñasco has an edge of the mesa on each side of it (R., 287–288).

J. W. Leak, sworn on behalf of the Government (R., 290), stated that he had lived as early as 1880 at the Cottonwood ranch, which, it will be recalled, is near the northwest corner of the grant; that he remembered Roskruge being there, and that the monument at the northwest corner first appeared in 1886, when Mr. Cameron "had got in a little squabble about it and thought it was Government land," and that no monument had been there previously (R. 291). Witness also testified that the old ruins of San Rafael were, according to

information which he had had since 1880, at the same place testified to by the other Government witnesses, to wit, on the west side of the river, about 3 miles below Slavens's place, and that he had heard of no other place bearing the name of old San Rafael. (R., 292.) Referring to the country in the vicinity of Harshaw, witness testified that the hills out in that place are quite red and all the soil next to the road is red; that what he had always heard called the Peñasco is on the divide between the Sonoita and San Rafael rivers at the same place testified to as Saddle Mountain. Witness gave what was probably the origin of the use of the term Saddle Mountain as applied to this elevation, as follows (R., 292–293):

> Q. Did you ever hear it (Peñasco peak) by any other name?
>
> A. I was working for Mr. Brewster Cameron. Mr. Colin Cameron was not there, and I was digging a ditch, and I noticed the Peñasco loomed up just after a rain. I says, "Look how the Peñasco looms up," and he says, "That is Saddle Mountain, that is not the Peñasco, we call that the Saddle Mountain," and I never heard it called Saddle Mountain before or since until I came here.

Joseph Campini, sworn on behalf of the Government (R., 294), testified that he had from 1881 up to four months prior to the trial lived about 9 miles east of La Zanja, on the west side of the Huachuca Mountains; that he was there engaged in ranching and cattle raising, riding the range every day; that when he first went there it was understood that old San Rafael

was located at the Enriques place, being the point about 2 miles north of the international line fixed by the other Government witnesses, his information being from the people at Santa Cruz with whom he had constant association during his residence down there; that he first knew the center point claimed by Cameron in 1880, at which time there was no pile of stones marking the monument and indeed no old rocks scattered around where the present monument now is, this monument first appearing in 1884 (R., 294–296). Witness testified to his having been up to Igo's first in April, 1880, having lived near there for six months; that he had seen the northeast corner claimed by Cameron, the first time in 1884, and the last time about six months prior to the trial, and that this monument was not there prior to 1884 (R., 296); that he had never heard of a Cerro or Sierra del Cobre at this point, the mountains near Igo's being called the Huachucas by the people of Santa Cruz and everybody; that there had never been copper found near Igo's, but on the contrary the only copper found is north of Tanners Pass, on a spur of the Huachucas near the end of the Canelo Range, and about 12 miles south of Igo's, at which point witness has a mine, and at which there is also located a spring larger than Igo's spring was when the latter went there and started improving it, and that at Igo's spring there was no *carricillo* or *tule* to be found; that witness first went to that vicinity in 1880. (R., 300, 353.) Witness further testified (R., 353) that right over his mine there is a bluff or sharp place, and that the

spring is at the mine. He exhibited to the court specimens of copper ore from his mine, and testified that a 160-pound specimen was to be found in the university in Tucson, and that his mine was about 3 miles east of Collins' old place, at which place there is a spring also. Referring to the monument at Igo's, witness testified that it was located at least 50 feet lower than the spring, and that while there were three or four stones there originally these were in connection with a mining claim held by a man named Patty. (R., 354.)

Witness further testified (R., 296) as to the monuments put up for the southeast corner, one having been put there in 1884 and the second in 1887; that these were put up by men hired by Cameron, witness supposed; that while he did not see them put up, he saw them surveying and working in that vicinity (R., 297), and also saw wagon tracks, and rocks piled up (R., 298), and the place where the stones had been taken out, 50 or 60 yards from the monument, the monuments being new (R., 352, 353). The same character of testimony was given as applicable to the east center monument, at which point (R., 357) witness testified there was nothing whatever in the shape of a monument unfil the Cameron party built it up, and that the stone transported to build this monument was more than a wagon load (R., 356).

Referring to the matter of the Peñasco and adjacent country, witness testified (R., 298) that he had known the Peñasco, or Saddle Mountain, ever since 1880, it being situated on the divide between the Santa Cruz and Sonoita rivers, and had never heard of any Peñasco

or point called Peñasco in that section of the country, except the point now named by the plaintiffs Saddle Mountain, and that this Saddle Mountain is visible from the Enriquez place (old San Rafael), and from Slaven's place (La Zanja), is very abrupt looking on the south side and has the appearance of a *peñasco.* Witness further testified to his acquaintance with the vicinity around the horse corral, and on this point testified as follows (R., 299):

Q. Do you know any arroyo north of the Santa Cruz Valley draining toward the Peñasco?

A. There is one that comes by the horse corral from Frazier's mine.

Q. How does that run with respect to the Peñasco?

A. West.

Q. Does it run up there near the Canelo hills?

A. It runs from the Canelo hills toward the Peñasco.

Q. I am inquiring about the point where this arroyo runs toward the Peñasco; is that the Santa Cruz slope or the Babacomori slope of the Canelo?

A. On the south to the Santa Cruz.

Q. Are there any mesas in the vicinity of where this arroyo runs west toward the Peñasco?

A. Yes, sir.

Q. How as to there being oak trees there?

A. Oak trees all that way across the foot of the Canelo range.

Q. Where are they with respect to these mesas running toward the Peñasco?

A. They are on it.

J. B. STEPHENSON being sworn as a witness on behalf of the Government (R., 301), testified that he had known the Igo place and spring as early as 1869; that he was with McLaughlin on his survey, and in the neighborhood of Igo's built a monument of rock 3 or 3½ feet in dimension at a point where there was no monument before that (R., 302), and that when he was on this survey with McLaughlin witness built a number of monuments under the latter's direction (R., 303).

DAVID ALLEN testified on behalf of the Government (R., 304) that he first went to the country known as Washington camp in 1878, at which time the only person living in the valley was a man named Enriquez, who was residing at the point testified to by the Government witnesses as old San Rafael, which point is about 4 miles below the Indian village claimed by plaintiffs as their center; that when witness first went there there was no monument of stone at said Indian village, but that about seven years thereafter, when Richardson and Cameron came there, a small pile of rock appeared. Witness stated that he was acquainted with A. A. Green as early as 1879, the latter having stopped with him at Washington camp in the years 1880 and 1881 (R., 305), during which time he talked with witness about the San Rafael grant, showing him where it was located. Witness testified that Green claimed his northwest corner to be about 3 miles from the Peñasco and northwest thereof, on what they called red hill, said hill not being as high as the Peñasco, and being in the vicinity of United States mineral monument No. 2, and about a

mile and a half northwest therefrom; that this red hill is a large round hill or mountain on the left of the road from Harshaw to Crittenden, and was always claimed by Green as his northwest corner (R., 306); that the Peñasco just referred to is the same point testified to by claimants' witnesses as Saddle Mountain, but that witness had never heard it called Saddle Mountain until the trial of this cause, it having been called Peñasco as early as 1878 by Enriquez, the settler above mentioned, and the people generally, and that there is no other point called Peñasco in the country (R., 307–308).

Testifying further, witness stated (R., 306) that the southwest corner of the grant, as pointed out by Mr. Green to witness, was at three little hills about a mile and a half from San Antonio Pass, being a stone monument with a black-oak stake, and that about five years afterwards Green claimed his monument to be up at the San Antonio Pass, at a pile of stones, this change of a mile and a half farther west being made, as Green stated, because these three little hills first chosen as his southwest corner would not take in Washington Camp, whereas the other place would; and after that Green always claimed as his corner this monument upon the pass. (R., 307.)

Witness testified that he was acquainted with Campini's place, in the vicinity of where the Canelo hills join the Huachuca Mountains; that there are springs there, the water from which runs down Parkers Canyon and Potrero Creek, and that witness had heard of copper being found at Tanners Pass, but never at Igo's

spring or elsewhere in the Huachuca Mountains, and that he had never heard that said mountains or any part of them were called the Sierra del Cobre (R., 308); that he first heard of copper being found at Tanners Pass in 1878, there being, according to tradition, a lost mine in that vicinity; that he had been to the monument placed a mile and a half north of Igo's, having first seen it in 1895, and that this monument did not exist in 1882. (R., 309.)

Witness further testified that Green had never stated to witness where the north center monument was, but had stated that his center monument was about 3 miles from the international line; that the only place witness had ever heard called San Rafael is a point about 4 miles south of the Indian ruins and on the west side of the river, at the Enriquez place. (R., 310.)

On cross-examination (R., 311) witness testified that he claimed to be the owner of the Pool group of mines at Washington Camp, having located them in March, 1878 (R., 315); that this group was within the San Rafael grant as claimed (R., 312); that when he first went there there were 50 or 60 mining claims at Washington Camp, and also a large number at Harshaw and Mowry camps, Harshaw having been a mining camp as early as 1877 and Mowry as early as 1861.

Being recalled (R., 328–329), Mr. Allen further described the location of the red hill, which Green had fixed as a northwest corner, as being south of west of

the Peñasco or Saddle Mountain, and that in his opinion it was not visible from right near the Canelo hills in the upper part of the Santa Cruz Valley, but that it was correctly shown on defendant's Exhibits 7 and 8, which also show Washington Camp and Lochiel. These exhibits, found opposite page 476 of the record, are instructive as showing the locality in which the Government contends was originally fixed the northwest corner of this grant.

D. G. CHALMERS, sworn on behalf of the Government (R., 316), testified that he had known the country since 1886, and that he was acquainted with the Peñasco, which is located at what claimants' witnesses call Saddle Mountain, being in appearance like a great big rock, and that this natural object can be seen 25 miles into Mexico, there being no other prominent peak or mountain that looms up like it. (R., 317.)

Witness testified as to the existence of Campini's copper mine, with a large spring there, which is located at the end of a very abrupt and wall-like spur of the Huachuca Mountains (R., 318), and to the fact that the copper mine in Tanners Pass is about 3 miles east of point C, marked on the large Roskruge map "Exhibit F–52."

Witness further testified that the monument at Igo's is lower than the spring at that point, and that old San Rafael is about 5 miles south of La Zanja. (R., 319.)

Referring to the alleged dry southwest quarter of this grant, witness testified that there is within that quarter a spring about 400 yards back of Lochiel

(R., 316), and he mentioned (R., 319–320, 321, 322), a number of other water sources which are found throughout the grant, and especially in said alleged dry southwest quarter. Witness testified as to the great value of the mines in the several camps on the grant as claimed (R., 318), in one of which he admitted he had an interest. (R., 321.)

Antonio de la Osa, sworn on behalf of the Government (R., 323), testified to his having lived at Lochiel since 1880, and to his knowledge of the Peñasco as being at the point alleged to be called Saddle Mountain, and that said Peñasco is so called by the old people of Santa Cruz, and has never been called anything else, being visible from all over the grant, and even into Mexico; that the ruins called San Rafael are situated eastward from Cameron's house, at the point where Enriquez lived when witness first went to that country (R., 324, 327), and that witness had never heard the place about one-half mile south of Slaven's called San Rafael; that witness had been frequently around Igo's place in the early days, and never saw the pile of stones claimed to be the northeast corner there until two or three years ago. (R., 328.)

Referring to the alleged dry southwest quarter, witness testified to the existence of what is known as the Saucito spring, about three-quarters of a mile west of Santa Cruz River, the water from which used to flow from the spring as far as the river, and was, when witness first went there, permanent water the year round, but that the water in that vicinity is now only about

one-half of what used to be. Witness testified also to the existence of a spring at his house in Lochiel furnishing sufficient water for irrigation (R., 325–326), and stated on cross-examination (R., 327) that he had cattle on the grant and claimed an interest in it from the Santa Cruz people.

GAVINO ARRIAGA, sworn on behalf of the Government (R., 329), testified to his being 60 years of age, and to his having lived all his life at San Lazaro, a settlement about 3 leagues from Santa Cruz and within the *ejidos* of that place; that he had an interest in the Santa Cruz grant, having helped to pay taxes on the same, both on behalf of himself and some of his neighbors (R., 330), there having been in times past a committee sent from Santa Cruz to Tucson to pay such taxes (R., 334). Witness testified to his having lived for four years at a place called Mesquite, within the grant as claimed, where he had a cattle ranch, this point being about 2 miles from the international line. Witness stated that he did not know the boundaries of the grant, and had never heard of any of them except the monument at the Potrero, presumably the south center monument; that he had never heard of the Sierra del Cobre, the mountain at Igo's having always been called the Huachucas; that he had never heard of any *Carricillo* spring in that country, at Igo's or elsewhere (R., 331), although the spring at Igo's was called *Carricito* by the people at Santa Cruz (R., 335); that he had known the Peñasco ever since he was 15 years old, it being situated on the divide between the

Sonoita and Santa Cruz valleys, and being visible from the neighborhood of Potrero Cañada and up the valley as far as Slavens's place; that it had always been so called, and witness did not know and had never heard of a point called Saddle Mountain; that witness never heard the place where the Indian ruins were located (being the point adopted by claimants as the center monument of the grant) called San Rafael; that in the early days copper was found in the Huachucas near where Campini's mine is, and from there below, at least witness was so informed by the old people when he arrived at the age of reason, but that there is no copper at Igo's or thereabout (R., 333), although copper had also been found near the Muchachita Pass, where, however, there was no mine (R., 339).

Referring to the matter of water on this grant, witness testified to the existence of the Saucito spring, containing permanent water, in what is alleged to be the dry quarter of this grant (R., 332), and to the fact that there was more water when witness first came there than now, there being then *cienegas* all around the valley (R., 334), although there are none there now (R., 338); also that the Patagonia Mountains were also called the Plomosa Mountains (R., 336), and that witness and the other owners of the grant, the people of Santa Cruz, had leased to one Samuel Hughes the ground surrounding the Hermosa mine, in what year witness did not recall. (R., 335.)

E. J. Hand, sworn on behalf of the Government (R., 339), testified to his living outside of the grant as

claimed, on the west slope of the Huachuca Mountains, at which point he had lived since 1875, engaged in mining and cattle raising. Referring to the center monument (R., 340), witness testified that he saw the monument about a mile below Slavens, first in 1884 or 1885; that it was not there previous to that time, to knowledge of witness (R., 340), and that while there might have been two or three rocks there, there was no such monument as there is now. (R., 352.)

Witness testified that the Peñasco was a well-known point (R., 341) visible from the Santa Cruz Valley and from Mexico (R., 346), and that it was the same point called by plaintiffs' witnesses Saddle Mountain (R., 341); that he had always heard it called Peñasco from the old Mexicans at Santa Cruz, there being no other Peñasco in that country, to witness's knowledge. Witness stated that he had always understood from the people at Santa Cruz that the place of San Rafael was located at the place where Enriquez lived, about 2 miles from the international line, and that he had always understood from the same source that the other ruins (at which the center monument is located by claimants) were Indian ruins. (R., 341.) Referring to the quantity of water in the country when witness first went there, he testified that there was more then than there is now, the water being then plentiful in the Santa Cruz Valley from Slavens's ranch down; and that, while there was no settlement in La Noria when witness came there, all the country had permanent water, both in and about Washington

Camp and over at Duquesne mine and inside of Cameron's pasture, on the west side of the river, where there was permanent water at the spring known as the Saucito spring. (R., 341–342.) Referring to the mesa east of the Potrero Cañada, upon which the east center monument was placed originally, witness testified (R., 343) that there are piles of stones found everywhere in that country, some on that particular mesa and some on others. This testimony throws light upon the reliability of an east-center monument fixed simply by a pile of stones on a mesa containing innumerable other piles of stones equally answering the description of the title papers. Witness further testified that Campini's mine is located at a spur of the Huachucas, the Cañada del Potnero heading about 3 miles from it; that there are at said mine three or four springs, and that copper is mined there, but never, to witness's knowledge, toward Igo's. (R., 344.) Witness testified to his having first seen a monument at the northeast corner along about 1884 or 1885, when it was new, and that prior to that time there was not, to his knowledge, any monument, although witness passed there a number of times, and thinks he would have seen it if it had been there. (R., 345.) Referring further to the topography of the country, witness stated that the spring at Igo's is higher than the monument, and that there was no carricito at Igo's when witness first knew the place, although it is a plant that grows in moist places (R., 345); also that witness knew the country around Washington camp, including the high hill there located with lime top, and that

while that hill is a very noticeable prominent object from the valley almost anywhere north, it is not the only lime hill in the Patagonias, for right west of Washington camp, where the Washington mine is, there is a lime hill that is so called (R., 346).

J. P. HOHUSEN, sworn on behalf of the Government (R., 360), testified that he had first known the San Rafael country in 1880, having lived on the old Slaven ranch in 1884, and prior to that time at Harshaw and different adjacent points in the employ of Mr. Richardson; that he held and raised cattle in his behalf, and in this capacity he rode the country every day for miles (R., 361); that what they call Old San Rafael was right adjoining the Enriquez place near the international line, and that witness never heard the place about one-half mile below Slaven's, where there are old ruins on the east side of the river, called San Rafael, and that there was no pile of stones on that mesa when witness went down there (R., 361). Witness testified to his knowing the peñasco, which is at the point marked Saddle Mountain, and is a high, steep bluff at the head of the San Rafael Valley; that witness had never heard this point called Saddle Mountain until the trial of the cause, and had never heard of any place farther north and northwest called the Peñasco.

Witness testified that he was with Mr. Richardson and Mr. Roskruge once when they made a reconnoissance or "kind of survey" of this grant on two sides of it, looking for monuments; that they looked for monuments about Mr. Igo's, but they did not find any, and

that a Mr. Trass, who was with them, living in the vicinity, pointed out down south from his place along the west side of the Huachuca Range to a prominent bluff, which he said was a corner of the grant. (R., 362–363.) Witness testified that he had heard of a corner of the grant situate perhaps 2 or 3 miles from the spring, at a point on the north end of the Huachuca Mountains (R., 364), but he understood at that time that the spring at Igo's, which was called carricito or carricillo, and more commonly Hayes, was outside of the grant (R., 364); and that in 1880 he did not understand, while in Harshaw, that the owners of the grant claimed that their grant covered the place of Harshaw (R., 363).

William M. Tipton, sworn on behalf of the Government (R., 365), testified to his having visited the grant as claimed in the capacity of special agent for the Government in April, 1899. He described the mesa taken by claimants as the center point of the grant as being characterized by the presence of broken pottery, arrowheads, and the presence of ruins which witness judged to be very old, and, based upon his experience with similar ruins in New Mexico, to be Indian ruins; this opinion being based upon the broken pottery found there and the lack of arrangement in the houses, which impressed witness as being similar to the ruins of Indian towns in New Mexico.

Witness testified that the Peñasco had been pointed out to him by Mr. Kunde and others, and that he had subsequently gone to it, and described it as having the appearance from the center of being a very large

rock, constituting the most prominent landmark on the horizon for some degrees on either side of it; that it has the appearance of a *peñasco*, as he understood the term in use among the people in New Mexico, and is the same point as Saddle Mountain on Exhibit F–52, and stands on the divide between the Sonoita and Santa Cruz rivers, the waters on the north side flowing into the Sonoita and on the east and easterly side into the Santa Cruz (R. 366–367).

Being asked as to any drainage toward the Peñasco from the direction of the Canelo hills, witness answered (R., 367):

> A. Yes, sir; there is from the direction of the Canelo hills; and not far from the top of the watershed between the Sonoita and the Santa Cruz, there is a sort of a canyon or valley-like depression south of the break toward the Sonoita that runs toward the Peñasco.
>
> Q. What distance?
>
> A. That I could not tell; I only observed it from the Peñasco; perhaps for a mile; perhaps more than that.
>
> Q. You did not go to that?
>
> A. No, sir; not at the place where it appeared to be running toward the Peñasco, but I was on the same drainage, at a point farther south than that, after it had turned south, running down toward the central part of the grant as claimed.

On cross-examination witness testified as to there being a number of peñascos in the section adjacent to the northwest corner of this grant, and that the Peñasco as designated on Roskruge's map is quite a prominent

landmark, and that the nearer you approach the top of the divide, going north, the plainer it is. (R., 368–369.)

Witness stated that he did not go to the north center of the grant as indicated on the Bonillas map, and being further asked as to the Saddle Mountain and the drainage toward the Peñasco, witness testified as follows (R., 370):

> Q. You say that from the top of the Saddle Mountain, in looking over toward the place marked "Horse corral," on the Roskruge map, that you could see a depression in the valley for about a mile?
>
> A. Yes, sir.
>
> Q. Would you call that depression an arroyo?
>
> A. It was so far away I could not state positively that it was an arroyo, but there was a well-defined drainage. There was an arroyo in that same drainage at the point where we turned off to go to Saddle Mountain.
>
> Q. Did you discover a red mountain from the point where an arroyo runs toward the Peñasco?
>
> A. Yes, sir; we went over on a point on the Canelo Hills subsequent to the time that we were up on top of Saddle Mountain, with a view to looking over that country with that very object
>
> Q. Did you find one?
>
> A. Well, there were some arroyos there for a short distance, in my opinion, running in that direction.
>
> Q. Did any of them edge on the mesa—any one of these arroyos?

A. There is a mesa on each side of the arroyo; yes, sir; that was as much on the edge of the mesa as they could be; they were at the foot of it.

Q. Did you find any oak tree on the edge of the arroyo around there?

A. There were oak brush all over that country.

Q. Did you see one with a monument around the foot of it—stones around the foot of it?

A. I did not see any such stones as I would call a monument; there were plenty of stones.

Q. Did you discover a red mountain that would answer the description of these title papers?

A. There was a red mountain or hill that could be seen from a point at the west foot of the Canelo range, between the place marked on that map "Saddle Mountain" and the point thereon marked "peñasco:" that red hill or mountain was somewhere in this vicinity, or over south, perhaps—south of the northwest corner on this map—and the point from which it could be observed I think was near where "Muchachita Pass" is written on this map in pencil.

Q. It is a very high, red mountain, is it?

A. It is a high, round hill, which appears to be high.

On redirect examination (R., 371) witness testified that this observation as to arroyos running toward the peñasco was taken in the neighborhood of the place marked "Muchachita Pass," and that the country and

mountains west of the peñasco and south of the northwest corner, as marked on the map, had red stains, and there were a number of places from a point west of Saddle Mountain up to the point designated as the northwest corner, where the mountains were red.

CHARLES A. SHIBBELL, sworn on behalf of the Government (R., 372), testified that he was recorder of the county of Pima, and that there were on record in his office, within the limits of the San Rafael de la Zanja grant, ten patented mining claims ranging in date from November 15, 1875, to April 13, 1889, and that many mining certificates and locations had been filed in his office affecting the country in the neighborhood of Mowry, Washington Camp, and Harshaw.

There was also introduced in behalf of the Government the title papers in the San Rafael del Valle and San Pedro cases, being the grants on the other side of the Huachuca Mountains, and in which these mountains are referred to as the Huachucas, thus showing that they were not in the early days commonly known as the Sierra del Cobre, as alleged by claimants (R., 497, 502).

There was also introduced as defendant's Exhibit 21 (R., 532) a letter signed J. M. M., apparently José María Mendoza, to Ramon Romero, dated January 6, 1831, from which it appears that on the date said letter was written the title had not yet been issued to the grantees, although the alleged indorsement on the expediente (R., 532) is to the effect that the title

was issued on May 19, 1825. Said letter is as follows (R., 532):

ARIZPE, *January 16, 1831.*

Mr. RAMON ROMERO:

MY DEAR AND ESTEEMED SIR: The commissariat-general of this State has entrusted to me the delivery, to the respective parties in interest, of various titles to the grant and confirmation of lands surveyed, appraised, sold, and adjudicated by the treasury of the federation prior to the classification of revenues, upon previous payment of fifty dollars in fees due on each one of them; and that of the place of San Rafael de la Zanja, which was knocked down to you and the other residents of that presidio on the 10th of January, 1822, being among said titles. I inform you, therefore, that you may be pleased to take it out of the section of the treasury under my charge as soon as possible, as is requested by your attentive, affectionate, obedient servant, who kisses your hands.

J. M. M. [Rubric.]

There was also introduced as defendant's Exhibit 22 a communication from one Pablo Frayjo to the treasurer-general, José Maria Mendoza, dated January 27, 1836, in which the writer recites the abandonment of the grant on account of the hostile Indians, and asks whether or not improvements made on the *ejidos* (commons) of the presidio of Santa Cruz would be construed as erected on the granted tracts (*sitios*). This communication appears in full on page 533 of the record. No answer to this communication accompanies it.

STATEMENT OF CLAIMANTS' REBUTTAL TESTIMONY.

WALTER E. MURPHY, sworn on behalf of the plaintiffs, testified (R., 379), that he was chief clerk in the office of the surveyor-general of Arizona, and identified a certain copy of the survey made by Solon M. Allis in 1880, which was introduced in evidence as plaintiffs' Exhibit F–74 (R., 462), and, reading from the field notes of that survey, witness showed that at a distance of about 2 leagues, or 200 cords, north of La Zanja there were noted on that survey a number of oak trees.

IGNACIO BONILLAS, recalled by plaintiffs (R., 373), testified that there was no distinction between the words *carricito* and *carricillo*, both being diminutive of *carrizo* and meaning a small cane, but witness admitted that the termination *illo* is very often a term of contempt, while *ito* is not and is purely diminutive, and that the *habitat* of the growth is warm places, and when it grows in cold places it does not attain its full growth, but remains small and slender and that is called *carricito*.

GEORGE J. ROSKRUGE, being recalled by plaintiffs (R., 377), denied that on his visit to the northeast corner he had built up the corner monument of the grant found there, or that he rode on a wagon with rocks and put them there on the monument, and stated that if any monument was built up it must have been a considerable time before he got there, as it was an old monument when he got there. Witness expressed the opinion that he got there ahead of Mr. Cameron

and Mr. Buehman on the occasion of his survey, as he was on horseback (R., 378).

Henry Buehman (R., 380), recalled on behalf of plaintiffs, testified exactly to the contrary, saying that as he recollected it they got there first and waited for Roskruge, but that the monument they found there seemed to be an old monument, and that witness did not see any monument built that day or any other day (R., 380–381).

Colin Cameron, recalled on behalf of plaintiffs, reiterated his denial that there is permanent water in the southwest quarter of the grant as surveyed by Bonillas, and stated that the water running at Washington camp and other points is there only at certain seasons; that A. A. Green had given the title to the Duquesne mine; that witness had expended in stocking and improving this range since he purchased it over $500,000; and finally that he had employed McLaughlin to survey this grant and paid him, although, as above pointed out, when first asked about this, he denied that he had ever employed McLaughlin (R., 382–383).

Concepcion Elias, recalled by plaintiffs (R., 384), testified that he had in olden times, before Igo's ranch was established, seen some small cane (carricito) growing at Igo's spring, and that there was a very well-developed road by that spring toward the San Pedro Valley in the early days, used both by the people of Santa Cruz and by the Indians. (R., 384.)

STATEMENT OF THE DECISION.

On February 10, 1900, the court, through Chief Justice Reed, handed down an opinion confirming the grant to the extent of 4 square leagues, the same to be measured in a square from the center established by the Mexican surveyor who made the original survey (R., 538–541), Justices Murray and Fuller dissenting on the ground that the grant should be rejected, it neither having been located or duly recorded, as required by the terms of the Gadsden treaty. (R., 541–542.)

The decree of confirmation was entered on February 10, 1900 (R., 536–538), covering 4 *sitios* centering at the center point adopted by Ignacio Bonillas and indicated on his plat, in evidence in this cause as plaintiffs' Exhibit F–25.

Claimants Cameron and Christie, on March 6, 1900, sued out an appeal, and on July 2, 1900, the United States likewise appealed, and the cause is before the court at the present time upon these two appeals thus sued out.

ARGUMENT ON THE FACTS.

1. The greater part of the record in this cause is taken up with the testimony as to boundaries. While it is not anticipated that it will be necessary for the court to pass upon these questions, since the decision of the case will, in all probability, turn on the questions of law, elsewhere discussed, it seems proper to at least outline briefly the contentions of the Government showing that the outboundaries of this grant are not where either Bonillas or Roskruge put them.

At the very outset, the most unusual excess within this survey arrests attention.

Four *sitios* or 16,000 acres sold; 160,000 acres surveyed. Where is the surveyor, no matter how ignorant, who does not know the difference between the two, or who, within the range of probabilities, would survey the one thinking it to be the other? The most exceptional character of this discrepancy is shown by the list introduced by Mr. Bonillas showing the grants he had surveyed for *demasias* in Mexico. In not a single one of these instances was the ratio between the *cabida legal* and the *cabida total* greater than one to four, and in most instances it was much less. Here it is one to *ten*. The very evidence of other surveys here produced shows that the attempt to stretch out this grant to 160,000 acres is unheard of in Mexican usage and would not be tolerated were this now a part of Mexico. Assuming that the Mexican officials were possessed of at least a little intelligence and at least a *modicum* of honesty—a concession that claimants seem unwilling to yield them—this attempt to prove that they surveyed 160,000 acres for 16,000 is absurd and incredible. In such a case the principles of ordinary justice and honesty, and the dictates of common sense, compel us to look further and to see if we can not find such objects as will create at least a semblance of harmony between *quantity* and boundaries. This the Government succeeded in doing by its proof on the trial of this case.

2. The Government, as will be presently considered,

has given the court a reasonable theory as to boundaries: the claimants have produced another theory. The Government's theory is nearer by 75,000 acres to the quantity granted than the claimants; which shall control? In a case of this character "where boundaries are doubtful, the quantity becomes a controlling consideration in fixing the limits."

Field v. *Columbet*, 4 Sawy., 523.
Winans v. *Cheney*, 55 Cal., 567.
Hoffman v. *City of Port Huron*, 102 Mich., 417.

The case of *Winans* v. *Cheney*, just cited, is most instructive on this point. In that case the controversy was as to whether the boundary of the tract ran along the summit of the western or eastern ridge of the mountain. Under one construction the tract would contain 1,737.13 acres; under the other, 1,067.19 acres. The deed described the land by metes and bounds with the further statement that it contained 1,056 acres more or less. Upon this state of facts the court (p. 569) held that "when boundaries are doubtful in themselves, quantity often becomes the controlling fact. It often makes the metes and bounds certain. The quantity, taking the eastern ridge as the boundary, approximates the quantity mentioned in the deed, being 11 acres more than the deed calls for. Taking the western ridge for the boundary it adds 680 acres, nearly two-thirds as much more, to the deed. * * * Such a discrepancy should not be disregarded in arriving at the proper location of the disputed boundary under the circumstances disclosed in the case."

Here, to adopt claimants' survey, will be to add not "nearly two-thirds as much more to the deed," but eight or nine times as much more to the deed.

3. The boundaries contended for by the Government in this case are the natural boundaries. It is evident that the purpose of the petition presented in 1821 was for 4 *sitios* within the valley or basin of the Santa Cruz. There was abundant water there, there was a wide expanse of pasture stretching east and west from the Huachucas to the Patagonias, which the owner of the water controlled, whether he owned the outlying lands or not. On the north was a natural barrier constituting the horizon view. Toward the northeast was the Canelo range of hills or mountains, steep and impassable save through the Canelo pass (see plaintiffs' photograph, 26), this Canelo range being the water divide between the Santa Cruz and the Babocomari; toward the northwest was a well-defined ridge hundreds of feet above the Santa Cruz Valley, constituting the watershed between that valley and the Sonoita, on the crest of which loomed up the Peñasco, mentioned in the titles. Thus, the *locus* within which this grant was sought was a magnificent and ample valley, walled in on the west and east by mountain ranges, on the north by the Canelo and Sonoita divide. It is hard to conceive of objects more appropriate for forming a natural park; and it was within these that Bustillo desired his 4 *sitios* containing the water, knowing that if he has these he controlled the rest, since, to use the language of the Ely case (p. 238), "who would

care to question the right of a locator along the waterway to any overplus of arid lands." It was this very theory of the ownership of the water, and the control, by virtue of this last fact, of the remainder that made the land so valuable in the eyes of the people of Santa Cruz and caused them to run up the bid to the unusual price developed by the papers. On the same principle that parties under our Government will spend large sums for a spring and a few acres surrounding it, not because of the intrinsic value of these taken alone, but because of the control for pasturage purposes which such ownership gives of vast arid tracts adjoining, the Santa Cruz people saw in the ownership of 4 *sitios* at the place of La Zanja the control of the great natural park inclosed by the hills and mountains just discussed. There was further the element of safety in the possession of such a tract as this: not being cut up internally by hills or mountains, every portion of it was in easy access to every other portion; there were no mountain passes to go through in order to get to a part of it, but it all lay together. In those troublous days, when Indians made raids and lurked in mountain defiles and amid the hills for purposes of murder and plunder, this was no small consideration. These people would never have thought of possessing a tract and of obligating themselves by their title to occupy it (R., 531) where occupation would entail separation from safety by high mountains, such as the Canelos, and would enable the Indians, by taking a stand at the Canelo Pass, to cut off those who had gone to

the north of the Canelos from all communication with their friends at Santa Cruz—an easy mark for massacre. The contention of claimants commits the original petitioners to all these absurdities. According to the Bonillas survey they had given to them not only the valley of the Santa Cruz, where there were 4 *sitios* six or eight times over, but a large portion of the lands in the Sonoita and Babocomari valleys—lands cut off from the main tract by almost impassable natural barriers, lands almost as foreign to the purview of the original application as is some of claimant's testimony to the truth. It is only necessary to look at the large Roskruge map used on the trial (R., 427) to see the very extraordinary character of the contention which claimants urge on this point. The fact that the grant, as carried over the mountains by the Bonillas and Roskruge surveys, includes valuable springs to the northeast and northwest affords the theory on which such surveys were directed by so far-seeing a cattleman as claimant Cameron. He needs these springs in his business for use in connection with his Sonoita and Babocomari tracts, should they ever be confirmed. This, though, is a matter of modern afterthought and enterprise. Bustillo and the Santa Cruz people no more thought of going across the Canelos or beyond the Peñasco divide to graze on their 4 *sitios* than they thought of going to Saratoga to spend the following summer.

4. Thus, the record of examination of the tract made on October 5, 1821 (see *expediente*), preparatory to ap-

praisement and sale, shows that the commissioner reconnoitered it "*with great detail in all directions*," and "found it to be an uncultivated place and the valley devoid of trees, with bottoms and benches of arid lands, because of the scarcity of *running water for irrigation*." It is hardly to be conceived that upon a reconnoissance made "with great detail in all directions" the commissioner would have overlooked the fact that the tract was cut in two by a mountain range, or that had it contained that character of topography he would have failed to notice it in connection with his mention of the valley with is bottoms and benches of arid lands. Attention is also called to the fact that the same scarcity of running water of which claimants now complain was a characteristic of the tract in 1821, thus indicating that the river even at that date was not a constant running stream.

5. The survey in 1821 shows that on a number of courses a measurement was impossible on account of the roughness of the ground. This is recited to have been true in running westward from the center, where it is said that it "was not possible to measure the remaining 67 cords on account of the roughness of the ground." On the course to the north, however, the surveyors "proceeded and measured 200 cords, terminating" at the north center monument, thus showing that they encountered no obstacles in running that line. If, however, the line was run from the center monument to a north center monument, as claimed by Cameron, it would encounter the roughest

of country, canyons, gulches, and finally the Canelo Mountains; whereas such a survey terminating at the south foot of the Canelos, as suggested by the Government, would accord entirely with the representations of the original survey. It is impossible that the surveyor of 1821 could have found that a line run up the Canelos and down again into the Babocomari Valley was a line capable of easy survey; the physical facts emphatically negative this. The only reasonable theory is that he stopped before he got to the Canelos, or, at the farthest, at the Canelos.

6. The great difference between the distance from the center to the south center monument and from the center to the north center monument on the Bonillas and Roskruge surveys arrests attention. Each of these, the surveyor of 1821 says, was 200 cords; each, he says, was actually measured. They should, allowing for slight discrepancies, be the same, or approximately the same; and yet, assuming the center to be where claimants insist it was, the distance from center to south center, scaled on the map of Bonillas, was 5.2 miles; from center to north center it was 11.68 miles, a difference of over 6 miles in the same measurement run by the same surveyor at the same time. Take, however, the north center as contended for by the Government. Taking this as being at or about the Horse Corral, it is, according to the scale of the maps, at a distance of 6.81 miles from the center monument, or very little in excess of the measurement from center to south center. This is a strong indication that the

north center is where the Government contends it to be—at the south side of the Canelo hills.

7. That the north boundary of the San Rafael de la Zanja grant was never, until the beginning of the reign of Cameron, considered to extend beyond the Canelo Hills is shown by the testimony of Angel Elias, examined for claimants in this and one or two other cases at the January (1899) term of court at Tucson. Elias testified in response to questions by Mr. Heney (R., 29, 30) that he knew how far the land of Santa Cruz extended according to the statements of the old people, and that was "*up to the place called puerto de Canelo,*" and that the boundary line of the San Rafael grant was at the "puerto de Canelo sloping toward the Babocomari." A glance at the maps in evidence will show that the *puerto de Canelo* is miles south of the north boundary claimed by Cameron and cuts the Canelo Hills from north to south, thus being on the north line as suggested by the Government.

8. The key of this survey is the location of the Peñasco, and upon it the Government is willing to rest its contention as to the boundaries of this grant. Is the Peñasco where a dozen witnesses for the Government place it, the high rocky bluff looming up as a part of the divide between the Santa Cruz and the Sonoita, visible to travelers from Santa Cruz even before they reach the international line? If so, the case for the Government is impregnable. No attempt will be made to recite again all the testimony showing that this is the Peñasco; this was one of the main issues of fact

gone into on the trial, and if the host of witnesses, among them men like Rolin R. Richardson, James Finley, and others, did not establish beyond controversy that this is the Peñasco, it is impossible to establish any fact in a court of justice by a preponderance of the evidence. As far back as Gavino Ariaga, the old witness for the Government, who has spent all his life at Santa Cruz, can recall, that rocky cliff has been known as the Peñasco. Concepcion Elias, whom claimants in the various cases in this court have been in the habit, ever since 1891, of introducing for the purpose of proving whatever could not be proved by any one else, himself admitted that the Peñasco was the first high bluff seen in coming up the Santa Cruz, and this the testimony all shows is the Peñasco contended for by the Government, that contended for by claimants not being visible at all until one gets far north of the center point. The name "Peñasco" was doubtless given by the people of the Santa Cruz, the nearest settlement, and that name would naturally be applied to the first object answering that description in going from Santa Cruz up the valley; and that the Government Peñasco does answer this description in coming from that direction is shown by the testimony of Mr. Tipton and the testimony of the other witnesses in the case (R., 248, 252, 298), even including Bonillas (R., 108). The plat of the first survey made of this grant in 1880 by Roskruge and Howe (R., 476), locates this Peñasco at the proper place, and Mr. Roskruge in his field notes of that survey (R., 472) refers to this rock

eight or ten times as the peñasco. Henry Hohusen, David Allen, Julius Kunde, J. W. Leak, P. J. Hand, D. G. Chalmers, V. H. Igo, James Finley, Campini, and Antonio de la Osa are among those who testified that Mr. Roskruge was entirely right in 1880 when he located this peñasco, and entirely wrong in 1887 when in his new survey this ceased to be the peñasco and became thenceforth, for purposes of this claim and otherwise, Saddle Mountain. Senior counsel for Cameron, in his brief filed in the court below, dismissed this great weight of testimony with the observation that there was "manifest training in the case" on that point. Counsel must be very hard to convince if the record in this case does not prove to his mind that any training in this case on this or any other point is clearly on the side of the claimants. What witnesses did claimants produce against this array of testimony as to the proper location of the peñasco? Bonillas, who lives miles away in Nogales and knows practically nothing about the nomenclature of the country except upon hearsay; Roskruge, who called this the peñasco in 1880, and in 1880 found a blazed tree, arroyo and all, at the end of 200 cords from the center for the north boundary, but who, under the hypnotizing influence of the Cameron administration, experienced a change of faith a little later, and in 1887 blossomed out as a full fledged proselyte to the belief that the peñasco was miles farther north and the north center monument beyond the Canelo hills; Concepcion Elias, who testified as to

the ancient and well-known monuments of San Rafael de la Zanja, and yet in 1880 proved his faith by his works by denouncing as public domain (and securing title thereto from the Mexican Government) a portion of these very lands that he incloses with boundaries sacred to the uses of the people of Santa Cruz; and finally Colin Cameron, the star claimant, whose ability as a monument builder is equaled only by his versatility as a witness. Such an array of talent has seldom been seen on the witness stand in any court, and such a failure to establish a substantive fact as was evidenced in the effort to move the peñasco farther north has seldom been known in a public tribunal. Counsel for claimants, however, dwell with impressive force upon the statement that the Bonillas and Roskruge surveys, although made years apart, are practically identical. Let us then see for a moment what this contention amounts to. Concepcion Elias in 1886 accompanies Roskruge as guide to the various monuments and boundaries, and Roskruge thereupon makes a survey showing the location of these monuments and boundaries and the area included within them. In order to identify Don Concepcion with this survey claimants seem to have photographed him into about half of the pictures introduced on the trial. In 1895 Bonillas comes along to locate the grant. With this same Concepcion Elias as guide to point out the same monuments and boundaries, *he* also makes a survey. Thus Concepcion guided Roskruge; Concepcion guided Bonillas. On the principle that things which

are equal to the same thing are equal to each other, it would seem that Roskruge and Bonillas being guided by the same person *should* have reached the same result, and for them to have done so, although Bonillas may never have seen Roskruge's survey, became a mere matter of mathematics. Indeed, with such ample facilities for agreeing it is remarkable that there is the amount of discrepancy that does exist between the two surveys. Thus, Roskruge's southeast corner is miles west of that selected by Bonillas, while his northwest corner is a mile or two north of Bonillas's. His north center monument is south of that chosen by Bonillas, and the exterior lines all around the tract diverge from each other in the two surveys. (Plaintiffs' Exhibit 52.) The wonder is not that these eminent inquirers after the truth coincide to such an extent, but that, with the same basis in each case, they diverge so greatly.

9. If the Peñasco is not located as claimed by the plaintiffs, but 2 or 3 miles south of it, then the north *cruz* monument of the Bonillas survey is improperly located, since it is on an arroyo which does *not* run toward the Peñasco, but toward an entirely different natural object. From Bonillas's map (Plaintiffs' Exhibit F–25) it will be seen that the arroyo runs toward what he calls the Peñasco and north of it. It does not run toward what he calls "Saddle Mountain" (the Government's *Peñasco*) (R., 225, 230, and plats), and in fact the testimony all shows that the so-called Saddle Mountain or true Peñasco is not visible at all from the Bonillas north center monument.

10. Another call in which the peñasco is mentioned is the northwest corner. The measurement from the north center monument to the northwest corner is recited as terminating "at the foot of a red hill, which is seen through an opening between the Peñasco and the Sonoita Mountain." The claimants all through the trial seem to have in mind as a northwest corner what they are pleased to term "the Red Mountain," apparently referring to a place having that name. The only drawback to this supposedly significant and impressive feature of the topography of the country is the fact that no such object is mentioned in the titles, the reference being to simply "*a* red cerro" or "hill," not "*the* red mountain." Claimants say this red mountain is seen as through a funnel from their north cruz monument, the end of the funnel being the Sonoita Mountain on one side and the Peñasco on the other. Interfering with this theory is the clear testimony to the effect that the Sonoita Mountains are not visible from claimants' north cruz monument (R., 106, 131, 163, 176), and also that the true peñasco is not visible from that point (R., 176, 223, 230, 374). As neither object is visible from the north center it is difficult to see how "a red hill or mountain" can be seen from the north center in an opening between them. To see an object in an opening between two other objects it would seem necessary to be able to see all three; otherwise relatively to the point of vision the first object is not seen in an opening between the other two. It is evident, therefore, that the Bonillas north and northwest cor-

ners do not fit the peñasco as located by the Government, and if that location be correct, the Bonillas survey can not stand.

11. Senior counsel for claimants urged in his brief in the court below that the special agents of the Government have uniformly "declined to risk their purpose for confusing the survey by looking at the impressive and convincing oak." It is assumed that "the impressive and convincing oak" referred to is the one at Bonillas's north center monument, of which one or two photographs—Concepcion Elias and all—are found in the record. It seems sufficient to say in reply that the representatives of the Government did not feel called upon to visit this "impressive and convincing oak" for the reason that it was discovered, first, that the "oak" was *not* impressive, there being thousands like it in that country, and, second, it could not be "convincing" since it was not at the edge of "an arroyo which runs toward the Peñasco," but on the contrary on an arroyo running to an entirely different object and in an entirely different direction. All interest in the oak was lost when it was discovered that its location by Bonillas on "an arroyo leading to the Peñasco" was as much a matter of fiction as was the performance of that same witness in Perrin's case in making a "mountain bearing southeast" answer the call for "a *loma* bearing northwest."

12. Is there an *arroyo* running toward the Peñasco that will answer the call of the title papers? If so, this court must accept it as the boundary call. That there

is such an *arroyo*, and, in fact, more than one such the Government contends is abundantly established by the proofs. The testimony of Mr. Cameron himself shows that such an *arroyo* drains out westward from the vicinity of the horse corral to within a mile or so of the *Peñasco* or Saddle Mountain, and then turns southward and eastward, returning to the Santa Cruz River (R., 174, 176, 177). At the request of counsel for the Government he delineated this on the large map used on the trial (plaintiffs' Exhibit No. F 52), and an inspection of that map will show that that *arroyo* runs almost directly to the Peñasco for several miles, carrying large volumes of water in the rainy season. Mr. Tipton, from the top of the Peñasco, saw this draw running directly toward the Peñasco (R., 367, 370). The testimony of Julius Kunde, a man who knows more about that country than anyone else in Arizona, is to the same effect, that there is such an *arroyo* (R., 274, 275, 287, 288), that it has a mesa on each side of it, and that there are numerous oak trees—some of them doubtless "impressive," if not "convincing"—upon these mesas, thus answering perfectly all the requirements of the *expediente* survey. Other witnesses who testified for the Government on the trial give with detail the location of this *arroyo* trending toward the Peñasco, and there is no doubt that such a natural object exists (R., 244, 267, 299). Mr. Tipton, who visited portions of the Canelo hills eastward from the horse corral, testified that *arroyos* are found there running toward the Peñasco between mesas on which there

are oaks (R., 370). If it be the duty of this court, as shown by the authorities above cited, to find and adopt as boundaries the natural objects most closely conforming to the quantity, there is abundant proof of the location of a north center monument south of the Canelo hills that this court should adopt as the proper limit of this survey in that direction. Even Mr. Roskruge had no difficulty in 1880 (R., 221) in finding "an *arroyo* running toward the Peñasco" about 5 miles north of his center point, and he found three large oak trees and a pile of stones on its south side (see the field notes of his survey of 1880, R., 475), and he had even less trouble in 1880 in finding a blazed oak on an *arroyo* in the same vicinity. See report to Surveyor General Wasson, dated September 7, 1880 (R., 468), and the map which accompanies the same. (R., 467.) While Roskruge testifies and his map indicates (R., 467) that the water in the *arroyo*, on the bank of which he found this blazed tree, runs away from the Peñasco or Saddle Mountain, or as he has it indicated on that map, "Prominent red hill" (R., 219, 467), his testimony and that map also show that the Peñasco is up toward the head of that arroyo, and it is entirely conceivable that the surveyor, standing at his north center and looking up this arroyo toward the Peñasco, might have described it as an *arroyo* "running toward the Peñasco." It is true that he could have been technically more accurate in describing it, but it doubtless never occurred to him at the time that an attempt would ever be made to carry this north boundary over the Canelos into the Babocomari Valley.

13. Coming now to the northwest corner, the testimony of David Allen, offered by the Government, is to the effect that "a red hill," which Green, in the early days, claimed was his northwest corner, is to be found near Harshaw (R., 306, 328, 329). This is indicated on the Roskruge map (Appendix III) as at the Alta millsite and United States mineral monument No. 2, and stands prominently between the Peñasco and the Plomosa Mountains. The location of the Sonoita Mountains, hills, or "*cerros*," is not very clearly defined by the evidence. Roskruge claimed that the San Cayetano Mountains were known as the Sonoita Mountains; Bonillas claimed that the natural objects referred to as the Sonoita *cerros* were the range of hills immediately at the Sonoita River, while Finley testified (R., 267) that a part of the Plomosa Mountains, being the north end of those mountains coming down to the Sonoita Creek, bore the name of the Sonoita Mountains. Upon Mr. Finley's theory—which is, to say the least, as worthy of belief as the others—the red hill, which Allen identifies, fits the *expediente* call for the northwest corner, and is, moreover, in accord with the topography of the country inclosing the Santa Cruz Valley, as above discussed, being at the west end of the Sonoita divide, on the crest of which towers the Peñasco. The testimony as to the existence of a red hill (R., 263) fitting the *expediente* and south of Bonillas's northwest corner is abundant (R., 246, 370).

14. Looking to the east of the Canelo hills for a northeast corner conforming to the *expediente*—a spring

and the point of a copper mountain—the proof is abundant that there is such a spring near Tanner's pass and thus about where the Canelos and the Huachucas come together. At this point copper ore and free copper is found in great abundance, some of it being tendered in evidence to the court with Campini's testimony. A large slab of native copper taken from this point is, the testimony shows, now in the possession of the University of Arizona at Tucson, and witness Campini has a valuable mine just there. This fulfils the call of the *expediente* for a copper mountain, and the spring at the point of this mountain, where it breaks off at or near Tanner's pass, answers the call for the spring given in the *expediente*. Claimants would have the court believe that the point of the copper mountain is at Igo's and that the Huachucas, which terminate at Igo's, were thus at the date of the grant called the "Sierra del Cobre." There is no testimony, however, that copper has ever been found at Igo's or for miles south of it, and that the Huachucas were not called the copper mountains at that date is shown by the *expedientes* of the San Rafael del Valle and San Pedro grants located on the other side of this very range, wherein this range is referred to as the Huachucas. The San Pedro survey was made in the very same year as the survey in this case and the fact that this range is called Huachucas in that document is very significant. If the northeast corner of this grant were at the point of the Huachucas, at Igo's present place, the surveyor of 1821 would have said so. By saying it was at the point of the

copper mountain he evidently referred to some part of the main range to which a special or local name was given because of the presence of copper; and the part of the range to which this name of Copper Mountain was given was not a locality, as at Igo's, where copper has never been found, but one as at or near Campini's mine, where copper has been found in great abundance (R., 244, 255, 256, 283–285, 300, 301, 308, 318, 333, 344, 345, 353), and from which it is said the church bells of Santa Cruz were themselves derived. Not only does the contention that the mountain at Tanners Pass was called Copper Mountain in the early days rest upon the fact that copper was found there, but also upon positive testimony. Thus Cameron says that Copper Mountain goes to the south end of the Huachucas (R., 184). Bonillas testified that Copper Mountain runs from Igo's southward to a low pass in the center of the Huachucas, called Tanners Pass (R., 124, 135). It is thus apparent that if Igo's was one end or point of these mountains, Tanners Pass is the other end or point; and the abrupt end of the mountain above a spring at Campini's copper mine and at that pass answers fully the call of the primitive survey. It is true that the title papers speak of the spring at the point of the Copper Mountains as being called the "Carricillo," and that there is a spring at Igo's, called the "Carricito." This resemblance of names, however, is too slender a basis upon which to hold that the two places are identical. Carrizo is a kind of cane, carricito is a small species of the same cane; carricillo is a contemptuous

diminutive of the same cane (R., 377). The name as applied to springs is referable to the fact that such canes grow in moist places and thus give their names to the springs. The same conditions for the growth of this cane exist at Campini's as at Igo's, and the testimony is that the former's spring is larger than the latter's. It is a character of growth much eaten by cattle, and the fact that no such growth is found at either place now is, therefore, not to be wondered at. We have only to suppose that such a name was applied in the early times to the spring at Campini's mine to have a northeast corner there that completely accords with the *expediente*. Further, the spring at Igo's does not fit the title papers. That spring is Carricito, the title papers say Carricillo. Counsel urge that these words mean the same thing. On the same principle Johnson spring and Jackson spring would necessarily be the same place, because Jack and John are synonymous. This matter of names, however, both as to orthography and application, is proverbially arbitrary, and the difference between the *expediente* name and the name of the Igo spring indicates clearly that they are different points.

15. We have thus a north boundary starting at the red hill at United States Mineral Monument No. 2, near Harshaw, following the Sonoita River divide eastward to the Canelo hills and to the edge of an arroyo issuing therefrom in the direction of the Peñasco near the horse corral, then following the Canelo hills to the spring at Campini's at the point of the mountain containing copper. To anyone who has seen the country

this is the natural north boundary of such a tract; to anyone who has compared the *expediente* with the country, it is impressively the north boundary which the original surveyor followed.

16. The plea of *res judicata* as to the north and northeast monuments of the grant, based on the Cameron fence case (148 U. S., 301), can not be sustained. This is not a case between the same parties. Here there are numerous codefendants with the Government who were total strangers to the former case, and if the decision of that case could be construed as binding on the United States, it certainly is not on the codefendants with the Government here, so that the case is open as to them for a full investigation on these boundaries. Further, this is not a case involving the same subject-matter. There the question to be passed upon was not whether the party owned the fee, to these monuments, but whether under the act approved February 25, 1885 (23 Stat. L., 321, c. 149), he had a claim or color of title thereto, made or acquired in good faith. There is an obvious distinction between an adjudication that the party was prosecuting a claim to these boundaries in good faith and an adjudication that he owned the fee to those boundaries, or that these were the correct boundaries at all. The court in that case held in effect that as a petition for the confirmation of this grant to the limits of the Roskruge survey had been filed before the surveyor-general under the act of July 22, 1854, and a report thereon made to Congress by the surveyor-

general, and said report had not been acted upon by Congress, and was still pending before Congress, this was in effect a claim made in good faith, and established for the purpose of the act of 1885 a "color of title." The court did not hold, however, that that claim was tenable or that the boundaries claimed were correct. It was a sufficient answer to the proceeding under that act that these boundaries were in good faith claimed; whether they were rightfully claimed was a matter reserved for some future tribunal. Neither had the court power to hold anything more in the case presented. Since the Government was not subject to suit without its consent, we must assume, in order to give this proceeding the effect contended for, that by instituting this quasi-criminal statutory proceeding it subjected itself to an adjudication of all the questions arising for all time with relation to the land upon which the fence was erected. As a matter of fact, however, the proceedings terminated when it was ascertained that a claim for the land—tenable or untenable—was being made or prosecuted in good faith by the party who erected the fence.

17. The east center monument is stated in the *expediente* to be "beyond the Potrero Cañada on a mesa contiguous thereto where a pile of stones was placed." Reference to the Bonillas and Roskruge maps will show that claimants have established their east center considerably to the north of east of the center of the grant, and in doing so have been obliged to carry their monument farther east to get it to the mesa "beyond

the Potrero Cañada." Since this mesa extends southward on the east side of the Cañada for many miles, had claimants simply run a line due east from the center, as the *expediente* states was done, they would have passed beyond the Cañada and on to the mesa just below the word "cañada" on the Roskruge map (F–52). This would have met the call in the title and would have included an area nearer the 4 *sitios* of the title. It would have run east from the center; it would have passed *beyond* the Potrero Cañada and ended upon a mesa contiguous thereto. There is absolutely no justification for the east center chosen for claimants, except the fact that a pile of rocks is found there. In view of the fact that this pile of stones was built up at a comparatively recent date, as shown by the evidence, and the further fact that there are piles of stone to be found all over that country (R., 281, 343), it is hardly believed that this court will attach any importance to it as a monument.

18. The southeast corner of the Bonillas survey is manifestly incorrect. A glance at the maps in evidence will show that there is a difference between the Roskruge and the Bonillas surveys on this point of 3 or 4 miles, Bonillas having carried his corner several miles farther east than Roskruge, and having thus included an additional strip of land on the southeast of very considerable acreage. Cameron accepted the survey of Mr. Roskruge, and in his affidavit and map presented to the Department of the Interior as the basis for excluding the area within this grant from

entry, he represented that the Roskruge survey—southeast corner and all—was a correct representation of the grant as he claimed it. This communication and map are in evidence and speak for themselves. (R., 468–476.) In addition, on the proceeding in the fence case above referred to, Mr. Cameron again tendered this Roskruge survey as a correct representation of his claim. These are the clearest of admissions as to the correctness of the location of the Roskruge southeast corner at a distance of 4 miles and 6 chains from the south center monument, and are as clear admissions of the incorrectness of the location of the Bonillas southeast corner at a distance between 7 and 8 miles from the south center monument. The latter is evidently an afterthought of claimants, born of the belief that while they were claiming they might as well claim amply, a course for which claimants are not without precedent in these Arizona land-grant claims.

In conclusion of this branch of the case the Government respectfully submits that, should it become material to consider the exterior boundaries of this tract, they should not be held to include any land north of the north boundary suggested by the Government under paragraph 15 above; that the east center should be at a point due east of the center upon first reaching the mesa east of the Cañada del Potrero, and the southeast corner should not be located farther east than the point shown by Roskruge in his survey of 1887.

BRIEF AND ARGUMENT ON THE LAW.

I.

Under the ordinance of intendants, as modified by royal cedulas of 1798 and 1805, the powers of intendants in reference to the sale of lands under article 81 were not only limited, but by the latter cedula entirely taken away and vested in the governors of the provinces; nor were intendants, under article 81, prior to its modification in 1805, given "full authority in reference to the sale of lands;" nor did they attempt to do more than to receive the petition of denouncement and carry on the proceedings until they deemed the matter ready for submission to the superior board of the treasury at the City of Mexico for determination as to whether the sale should be made.

Intendants, and subsequently governors of the provinces, were charged only with a superintendence of the incipient and mediate states of the title, but the power of completely severing the subject of the grant from other Crown lands was uniformly retained by superior authority.

In submitting this proposition, counsel beg the charitable indulgence and consideration of the court, for it appears by the opinion in the case of *Ely's Administrators* v. *United States* (171 U. S., 220) that the court must have been misled as to the position taken by the Government in that case, for it is said (225):

> What powers did the intendant possess at the time this sale is alleged to have taken place? It is conceded by the Government that by the ordinance of December 4, 1786 (at which time Mexico was a province of Spain), the in-

tendants had full authority in reference to the sale of lands.

And article 81 of that ordinance is then set out in full.

It was admitted on behalf of the Government that the proceedings for the purpose of obtaining titles to Crown lands were by article 81 required to be initiated before the intendant. His original authority, however, extended only to making up the expediente in conformity with the laws on the subject; but before any interest became vested in the applicant it was necessary for the intendant to send the expediente and his report thereon to the superior board of the treasury at the City of Mexico for its determination as to whether the sale should be carried into effect or modified in such manner as said board might direct. If the superior board of the treasury approved the proceedings, they were returned to the intendant and formal title was issued to the grantee; but, even then, before delivery it was required to be again sent to said superior board of the treasury, and, if approved, it was returned and delivered to the grantee, thus completing the grant in form and the vestiture of title in the grantee. (See Hall's Mexican Law, 40, and 2 White, 71.)

It is a notable fact, disclosed by the royal decrees from 1521 on, that no official or official body, before whom proceedings for acquiring the title to Crown lands were initiated, was ever permitted to issue and deliver final title without first submitting such action to the supervising control and receiving the concurrent

approval of some higher official or official body, and without which the grants could not be carried into effect, and such was also the policy of the law of Mexico relative to the disposition of its public domain.

It is quite interesting as well as instructive to look into the system of the tenure by which landed estates were acquired and held. The most complete and satisfactory résumé we have noted is found in Hall's Mexican Law, Chapters I–VI.

The policy of requiring the action of the officials first initiating title to be submitted for review and approval, without which the Crown was not obligated to recognize or consider the same as lawful tenure, is carried prominently through all changes of the system from the time of the conquest by Cortes to the independence of Mexico in 1821, a period of three centuries. Upon presentation of the Ely case to this court, this distinguishing feature was noted, possibly not with the clearness it should have been; but it was surely contended upon argument and in the brief that, the authority of the intendants relative to disposition of the Crown lands was limited and circumscribed by requirements which negatived the theory that "intendants had full authority in reference to the sale of lands." The supervisory control exercised by the superior board of the treasury over the action of intendants is fully evidenced, not only by the very terms of article 81, but by the royal cedula of March 23, 1798 (Reynolds's Spanish and Mexican Land Laws, p. 65), and the decree of February 14, 1805 (Ibid., 68–73). It is thus seen that in 1798 and 1805 article 81 was materially amended, but in

neither instance was the transmittal of the proceedings to the superior board of the treasury for its approval dispensed with as a condition precedent to further authority on the part of the intendant to continue the proceedings.

By the decree of 1798, the King approved the resolution of the superior board of Mexico of July 23, 1790, ratified February 24, 1792, by which those who applied for a composition or made a denouncement of the vacant Crown lands were excused from further applying to that board for a confirmation of titles, upon the payment of 2 per cent of their value in the respective offices of the auditors; when the value of the land denounced or composed did not reach the sum of $200, the proceedings were to be had in the intendancies and also in the superior board of the treasury, with the exception that the second transmittal of the proceedings for confirmation of the title and the designation of pecuniary services, as provided in article 81, was to be dispensed with. This clearly demonstrates the supervisory control of the superior board of the treasury over the action of intendants, and also demonstrates that the intendants' power ceased when the *expediente* had been made up ready for transmittal to the superior board of the treasury for its first examination in order to determine whether the matter should be carried further to the issuance of title.

The royal cedula of February 14, 1805, recites the correspondence and controversies that had arisen over the extravagant claims that were made for lands, title

to which was alleged to have originated under the intendants. In that decree it will be noted that the superior board of the treasury had decided on May 10, 1802, that the power of the intendant should be limited as to the quantity of land he was authorized to take proceedings to alienate. That power was to be confined to not more than 4 sitios for the wealthy and 2 for the poor, and the time for making settlements was to be one year. By the royal cedula of 1805 the *governors* of the internal provinces were authorized to admit denouncements indiscriminately, and to make sale of the Crown lands in their districts, provided they did not exceed the quota prescribed by the superior board under its decree of May 10, 1802.

It appears by the seventh article of the ordinance of intendants (Reynolds's Spanish and Mexican L. Laws, 59) that it was promulgated chiefly "to prevent the frequent embarrassments and conflicts that would occur between the intendants and governors, magistrates and chief alcaldes," etc.

Article 81 clearly defined the powers and duties of intendants, as separate officers, from those of political and military governors.

The complications and embarrassments which the King sought to avoid by the ordinance of intendants seem to have increased, resulting in the royal cedula of February 14, 1805 (Reynolds, 68–73). Attention of the court is respectfully directed to this cedula and the orders and reports preceding it:

Orders of Pedro de Nava, October 22, 1791 (Reynolds, 62), and January 19, 1793 (Ibid., 63).

Royal cedula, March 23, 1798 (Ibid., 65).

This cedula of February 14, 1805, was the law of Spain relative to the disposition of the Crown land in New Spain at the date of independence.

It will be noted that the governors of the internal provinces and not the intendants were "authorized to admit denouncements indiscriminately, and to make sales of Crown lands in their respective districts" under the rules established and with the provision that "they make report to the superior board for approval" (Reynolds, 74). See last paragraph royal cedula, February 14, 1805 (Reynolds, 73).

It appears that the cedula (1805) transferred the authority to receive denouncements of Crown lands in the internal provinces from the intendants to the governors of the respective districts or provinces, and that article 81 must have been abrogated thereby. The case of *United States* v. *Moore* (17 How., 209) is quite instructive upon the controversies between the military governor of Louisiana and the intendent:

> Some of the governors acted also as intendants, but that would not alter the power conferred. It was in their capacities as governor they were authorized to make grants and not as superintendents of finances (219).

The same observation is quite pertinent under the cedula of 1805.

In this instance Cordero was governor, also intendant, but nothing appears to indicate that Bustamante was performing or attempted to perform the functions

of any office except that of intendant and that only *ad interim.*

If the cedula of 1805 was in force at the date of independence, it must follow that intendants no longer had authority to receive denouncements of Crown lands, and their retention by the sovereign provisional council of government (October 5, 1821, Reynolds, 95, and January 16, 1822, Reynolds, 98) adds nothing to their authority even if it were intended to do more than retain them in the exercise of such functions only as were necessary to preserve peace and good order and carry on the government solely in such instances as did not call for the exercise of the sovereign power of the new nation.

If Bustamante, intendant *ad interim*, was also governor *ad interim*, some semblance of authority might appear authorizing him to make up the *expediente*, but in the absence of some such showing, no lawful authority for his intervention appears attached to the *expediente* immediately following Bustamente's approval of the proceedings and report. (R., 530–531.) It is to be noted that 18 per cent of the half annate tax was collected for transmittal to Spain. The same item is found in the receipt or voucher in the Ely case attached to the *expediente.*

The fact of the deposit of the money was the inducing consideration for this court to hold in the Ely case that, the commissary-general was authorized to extend the title, although no direct authority therefor was shown. It is believed that had the court's atten-

tion been specifically directed to the fact appearing in the voucher that 18 per cent had been collected for the purpose of transferring the money to Spain, it would not have held that the proceeds had gone into the public treasury of the succeeding Government. The only evidence which we have in either case that there was any money paid at all is the voucher or receipt in each case, and *if it states the truth* then the money was not in the treasury of Mexico and was not intended to go there, nor was the intendant acting for Mexico, but was attempting to dispose of the *Crown* lands for the benefit of the Crown, collecting the money for the Crown and transmitting it to Spain.

Commissary-General Riesgo does not pretend in either the Ely case or this case to extend the title by virtue of the laws of the Republic of Mexico, but by virtue of the provisions of article 81 of the ordinance of intendants and according to the instructions of October 15, 1754. Although Riesgo issued final title upon this expediente on May 15, 1825, yet we find José Maria Mendoza, on January 16, 1831 (R., 532), writing to his "esteemed friend" Romero informing him that the title to the San Rafael de la Zanja, which had been sold to him on January 10, 1822, was in his possession, and that for a fee of $50 the same would be delivered to him; and he was requested to take the same out of the treasury under his charge as soon as possible. So that it appears that José Maria Mendoza, who was a witness to Intendant Bustamente's approval and report to the superior board of the treasury, and who

was the secretary to Riesgo, the commissary-general, who failed to recite any other authority for his acts than the ordinance of intendants and the decree of 1754, was also the treasurer of the State of Sonora and had retained the expediente of the grant until January 1831, and was now demanding a $50 fee for the delivery of the same to Romero.

Whatever power the intendant may have possessed relative to the disposition of the public lands in 1821 and 1822, it was governed by the provisions of the ordinance of intendants, article 81, as modified by the royal decree of March 23, 1798, and February 14, 1805, and it is suggested that the statement in the opinion in the Ely case that "it is conceded by the Government that by the ordinance of December 4, 1786, * * * the intendants had full authority in reference to the sale of lands" was more comprehensive than the Government's brief and argument warranted; and, as has been shown in this brief as well, they did not have "full authority in reference to the sale of lands."

Of course, as to whether the ratification and approval in 1825 by Riesgo, commissary-general, operated to cure the omission of the examination, approval, and confirmation by the superior board of the treasury, *which was necessary* under the law relating to intendants, as has been shown, depends upon the power and authority conferred upon him by the laws of the Republic of Mexico. He is admittedly not so authorized in specific terms, nor does he recite any

law of Mexico justifying his act in this regard. It may well be contended that if he considered he was authorized by any specific law of the Republic of Mexico to extend this title he would have recited such a law instead of stating that his power and authority was derived from the ordinance of intendants and the royal cedula of 1754.

It has been shown that the purchase money was to be transmitted to Spain and was never intended for Mexico, and therefore no obligation was afterwards placed upon the Republic of Mexico to extend this title or to recognize the same by reason of its having received the benefit of the purchase money.

The only tenable ground upon which the action of Commissary-General Riesgo in extending this title can be sustained is that his so doing was never afterwards disavowed; and that reasoning would hardly pass legal scrutiny.

It was said by this court, in *Camou* v. *United States* (171 U. S., 277–290), that Mexico "after its separation from Spain in 1821 was asserting to act as a republic, subject to express constitutional limitations. While temporary departures are disclosed in her history, the dominant and continuous thought was of a popular government under a constitution which defined rights, duties, and powers." It was well said in the case of *United States* v. *Lee* (106 U. S., 196, 209) that the United States is a government by law and that "no man in this country is so high that he is above the law; no officer of the law may set that law at defiance

with impunity; all the officers of the Government, from the highest to the lowest, are creatures of the law and are bound by it;" and the same may be said of the Republic of Mexico from the date of its independence. If Riesgo's acts are to be tested by the principle so announced by this court, his extensions of the titles in 1825 upon all incomplete titles initiated by intendants, must be pronounced unlawful and thus within the prohibition of subsection 1 of section 13 of the act of March 3, 1891, which precludes the recognition of titles "not lawfully and regularly derived from the Government of Spain or Mexico."

II.

The petition in this case is barred by the provisions of section 12 of the act of 1891, it being shown by the proof that plaintiff Green had, at the date of filing his petition, no interest in the subject-matter of the suit, and the cross petition of Cameron and Christie not having been filed until 1899.

This proposition will be found discussed under paragraphs 66–68 of Heading V of this brief.

III.

The claim must be rejected for the reason that the grant sued for had not been located and duly recorded in the archives of Mexico prior to September 25, 1853, as required by Article VI of the Gadsden treaty.

The discussion of this obstacle to a confirmation will be found under paragraphs 50–63 of Heading V of this brief.

IV.

This grant is void as a matter of law so far as it exceeds 4 sitios, because the power to grant was limited by the cedula of February 14, 1805, to that quantity.

1. Assuming that the intendant was vested with power to make this grant, the power to grant was absolutely limited to 4 *sitios*, and therefore this grant, so far as it exceeds 4 *sitios*, is void for lack of power in the granting officers, just as it was so frequently held in California that a grant of more than 11 leagues in the Territories under the national colonization law of 1824 was *pro tanto* void.

> *United States* v. *Hartnell*, 22 How., 286.
> *Roland* v. *United States*, 7 Wall., 743, 750.
> *United States* v. *Cleveland and Colorado Cattle Company*, 33 Fed., 323.

2. Since claimants hold under a supposed power in the intendant, they hold subject to all the limitations on that power existing at the date of the grant. Among these limitations was that contained in the *cedula* of February 14, 1805 (Reynolds, p. 72), where it is expressly provided that "there should not be adjudicated or granted more than 3 or 4 *sitios* (to wealthy) and 2 to the poor." Assuming that Manuel Bustillo, the petitioner for this grant, was wealthy, and thus entitled to the maximum of 4 *sitios*, the power was to grant him this amount, and no more.

3. That the *cedula* of February 14, 1805, was in force in 1821 is shown by the petition in the San Pedro

case (*Reloj Cattle Co.* v. *United States*, No. 30, present term), dated and presented in 1821, where Perez applies for certain lands "pursuant to the provisions of the national laws and *terms of the royal cedula of February 14, 1805.*" The proceedings in the Cameron case were initiated in 1821 and were subject to the limitations of this same *cedula.*

4. That this *cedula* limited a grantee to a maximum of 4 *sitios* is shown not only by the plain wording of the *cedula* just cited, but by the reason for this limitation as stated in the cedula, as follows (Reynolds, p. 72):

> That the superior board, in view of that which had been decided, and considering that the settlement of a *sitio* of a league in extent was very difficult for a person of large means, and that lands of large area were held without this legal obligation having been fulfilled, to the prejudice of others, decided in their decree, etc.

This limitation is construed in the San Pedro title papers of 1821, where Perez, in his petition, after stating that he enjoys "some property," but is without a place upon which to locate them, prays that under the terms of the royal *cedula* of February 14, 1805, proceedings be initiated for the final sale to him of "*the 4 sitios.*" Perez had nowhere else in his petition mentioned *sitios*, so that *the 4 sitios* referred to must be those allowed by the *cedula* under which he prays for a grant, the *cedula* of 1805. Thus he himself recognized the limitation imposed by law on the granting power and invoked the grant subject to this limitation. His successors in interest at the present day are

estopped to claim more than this amount. The same is true of the Cameron grant, made in the same year, under the same *cedula*.

5. Another construction of the law as to the amount grantable is found in the *expediente* in the San Rafael de la Noria, referred to on page 93 of the report of Special Agents Tipton and Flipper, presented to this court in connection with the Ely case. In that case the proceedings were initiated on March 29, 1813, and went through various official channels until they reached the viceroy at Mexico in 1816. On November 22, 1816, the viceroy referred the *expediente* to the attorney of the royal treasury. On December 31, 1816, the attorney recommended that the *expediente* be approved for *4 sitios* instead of *5*, as the amount of land was limited to *4 sitios* for *one person*, and husband and wife were one person. This *expediente* further shows that proceedings were thereupon had to segregate the *4 sitios* from the original *5* and pay back the value of the one rejected. This proceeding is instructive not only as showing that there was a recognized limitation on the quantity grantable to any one party, but also as indicating the importance attached to this matter of quantity by the Spanish and Mexican officials. It is the controlling element of all these grants. So far from there being under the Mexican Government no grants by quantity, as argued by counsel for claimants, these Arizona grants, when tested by the laws and usages of the former government, were *all* grants by quantity. In the Cameron

and San Pedro cases the grants were certainly and necessarily by quantity, because the law limited the power to grant to that quantity.

6. While it is true that in this case the number of purchasers at the final auction was more than one, that does not affect the limitation of 4 *sitios*, just referred to. The rights of the final purchasers were limited by the rights of the original denouncer. They simply stepped into his shoes and took what he could have taken had the land on the final auction been knocked off to him instead of to them. In addition, the purchaser was really the community of Santa Cruz, a legal unit which was entitled to what one person could have gotten and no more. However this may be, the rights of the final purchasers were circumscribed by the rights of Bustillo. As was said by claimant's counsel in his brief in the court below:

> None of them [the people of Santa Cruz] could put in a separate petition for the land, because he [Bustillo] had a legal standing in court, and their only chance was to defeat *his claim*. * * * They had but one remaining chance, which was to outbid him at the final auction of the land. They combined their slender means and sent Romero to Arizpe to outbid Bustillo, if they had the money, to save this important place for the general good of the people of the pueblo.

But the "claim" of Bustillo just referred to was, as a matter of volition, as shown by his petition, and as a matter of necessity, as shown by the *cedula* of 1805,

one for 4 *sitios*. It was this claim that the community of Santa Cruz sought to defeat and finally acquired by outbidding him. The fact that a large purchase price was paid—more than sufficient, as counsel argue, to have paid the minimum government price for the whole tract within the boundaries—throws no light on the quantity that passed by the sale. The price secured must be ascribed to the warmth of the contest for the land offered; but the bids made were all with the presumed knowledge of the law which limited to 4 *sitios*, and with the actual knowledge that 4 *sitios* was all that was petitioned for and was all that was being offered for sale. No more could have passed to Bustillo or to the community unless we are to disregard the plain terms of the law.

V.

A. *The amount of land granted under the papers in this cause was the amount paid for, to wit, 4 sitios, and no more.*

1. A large portion of the argument of counsel for claimants in the court below was devoted to the proposition that the extent of any confirmation entered in this cause, should there be a confirmation, must be, not 4 *sitios*, the quantity named throughout the *expediente* and *titulo*, but the amount included within the natural objects of the primitive survey, be that amount 162,051.83 acres, as claimed on the Bonillas survey, or the considerably less amount contended for by the Government. The importance of this question seems to justify a full discussion of the subject not only as applicable

to this case but also to the other Arizona cases in which this question arises.

2. It is respectfully submitted that there has been nothing brought forth in the subsequent course of this Arizona litigation that should lead to a modification of the views expressed by the court below as long ago as March 30, 1894, when, speaking through Chief Justice Reed in the Nogales case (*Ainsa* v. *United States*, 161 U. S., 208), it was said:

> The sale occurred when the property was stricken to the petitioner and he paid the purchase price into the treasury. When he paid for the specified quantity of land which was stricken off to him at the sale and accepted a grant or conveyance of the quantity, his rights, we think, are necessarily limited to that quantity. We do not dispute the correctness of the rule laid down in the cases cited by counsel; neither are we in conflict with that rule. The rule undoubtedly is that when a conveyance is by metes and bounds, a recital as to the quantity supposed to be contained in area does not limit the grant, but the grantee takes all within the boundaries. But here the grant is of a specific quantity included within specific boundaries, and by the express language of the grant the quantity is made the controlling matter of description, and the intent of the granting officer to reserve to the Government the excess over the amount granted within the boundaries is as clearly manifested as it could have been made by a reservation in express language.

This decision, rendered over seven years ago in the first case involving these questions, is still the law of these cases, not only because of its inherent strength as embodying sound principles of law, but because it has been sanctioned by the solemn decisions of this court on appeals taken in the Ainsa and subsequent cases.

It was contended by claimant's counsel in the court below that every principle announced by this court in the Ainsa or Nogales case has been since overruled and disapproved, except one, which is as follows:

> Monuments control courses and distances and courses and distances control quantity, *but where there is uncertainty in specific description* the quantity named *may be* of decisive weight, and necessarily so *if the intention to convey only so much and no more is plain.*

While this is not conceded by the Government (as will be hereinafter more fully discussed), the principle of the opinion which counsel concede has not been overruled—to wit, that the quantity named is necessarily of decisive weight, "if the intention to convey only so much and no more is plain"—is conclusive of their case. This intention to convey the number of sitios named and no more is as dominant a feature of the title papers in every case now before this court as it was in the line of cases beginning with Ainsa's and ending with Camou's. It is the impressive fact that confronts one on reading the very caption of the *titulo*, where the number of *sitios* granted is named, and accompanies one, with ever increasing force, into the

granting clause at the end of the document, where this same salient fact of *quantity* is repeated. The framer of the *titulo* tells the reader at the very beginning of the instrument that only **4** *sitios* have been sold, he tells him so at the very end, and for the benefit of those who "would not believe though one rose from the dead," he reiterates it at close intervals throughout the whole course of the instrument.

4. An evident effort was made by counsel in the court below to escape the force of the rule above quoted from the Ainsa case by the contention that it is applicable only where "there is uncertainty in specific description," and that where there is no uncertainty, the specific descriptions, such as monuments, control, even though the "intention to convey only *so much* and no more is plain." It seems to be clear, however, that that rule applies whether the natural objects are identified with certainty or are not so identified. Since the object of the execution of all written instruments is to effectuate and perpetuate the intention of the parties, it is difficult to see why "an *intention* to convey only *so much* and no more," when "plain," should not prevail, irrespective of other considerations. The reason of the rule for giving a preference to recitals of monuments over recitals of quantity is of course the fact that such a construction is more consonant with certainty and thus with intent, but where the intent of quantity and "no more" is "plain," there is no room for construction. It is simply the duty of the court to carry the plain intention into

effect. To hold that natural objects shall prevail over quantity, when it is plain that the parties intended quantity to prevail, is to subordinate substance to a shadow, to sacrifice the evident truth to an inapplicable and technical rule of law. That this court never held any such views is shown by its language in the Ainsa case, where this rule is cited. In that case there was little if any controversy as to the exterior boundaries. There was even less in the *Ely case* (171 U. S., 220), and there was none at all in the *Maish* or *Canoa case* (171 U. S., 297); yet in each one of them this court announced and reannounced the doctrine that the number of *sitios named* was all that passed. In none of these cases was there the issue of fact or the degree of uncertainty that is present in the San Rafael de la Zanja or Cameron case. If the reason for the rule as interpreted by claimants' counsel is applicable to any Arizona case now or heretofore pending before this court, it is applicable to Cameron's. The uncertainty of the boundaries of this grant has already been discussed.

5. The contentions of counsel for claimants, as developed by their briefs below, are not entirely clear, and it is believed that they are not altogether consistent. So far as the writer can discover what is contended for, however, the positions of claimants are threefold: *First*, that the terms of these Arizona grants carry the title in fee, to the monuments, regardless of quantity; *second*, that the Sonora law of May 12, 1835, was a grant *de novo* or a revalidation to the parties of

any excess within the monuments over the quantity named; *third*, that, in either event, the claimants or their predecessors had at the date of the treaty property rights in the excess or *demasias* such as makes it incumbent on the United States to confirm them the land on the payment of the same scale of prices for the *demasias* as prevailed at the date of the original grant. These positions will be considered *seriatim*.

A.—DO THESE GRANTS EX PROPRIO VIGORE CARRY THE TITLE TO THE MONUMENTS?

6. The first of these positions—that these grants *ex proprio vigore* carry the title to the monuments independent of quantity named—is based upon the familiar principle that monuments control quantity, as a matter of description. While this rule has never been for a moment disputed by the Government throughout this litigation, its applicability to this character of title paper has been combated from the outset. It is difficult to see how this position, in view of the course of this litigation, can be insisted upon by counsel for claimants with any idea of success.

7. The instruments themselves show that quantity was in the minds of the parties to the proceeding. Quantity was petitioned for. The law contemplated a sale by *sitio*, since it fixed the price *per sitio;* the parties asked for so many *sitios*, bid for that number, that number was knocked down to them on the auction, and that number was paid for. That was all the parties to the transaction thought was being sold and that was all that was sold. The familiar principle that the

construction given the instrument by the parties to it is of very persuasive weight is of peculiar application here. This practical construction is evidenced by the testimony of Concepcion Elias, called on the trial for the claimants. Elias claimed to be descendant of one of the *parcioneros* and to be familiar with the grant, and his testimony was to the effect that he had always heard of the grant as one of 4 *sitios* (R., 208, 211). So also in the document of 1836, introduced by claimants, the parties in asking for permission to maintain their settlement on the *ejidos* of Santa Cruz, and to have such settlement considered as on the lands of San Rafael de la Zanja, refer to the latter as the "*sitios*" granted them (R., 533).

8. It was contended, however, in the court below that the term *sitio* has no technical meaning, and that when used in these venerable deeds means simply a tract of land, the extent of which is to be determined by the rest of the instrument. It is not believed that a shadow of foundation can be found in the books for this assumption. The term "sitio" when used alone means a square of 5,000 varas, or 100 cords, on a side. It is equivalent to a "sitio de ganado mayor," which thus has an area of 25,000,000 square varas. When an area of less than 25,000,000 square varas is intended, the term "sitio" or "sitio de ganado mayor" is never used, but some qualifying term or expression goes with the word sitio. Thus, a "sitio de ganado menor" has an area of 11,111.111⅑ square varas. "Sitio" standing alone, however, has a well-defined meaning and a well-fixed area, and that is the area and the meaning above

given. There are a large number of laws declaring the extent of the sitio, a few of which will suffice to illustrate the uniform definition given the word as a technical unit of measurement. Thus, article 5 of the law of January 4, 1823 (Code of Colonization, p. 172), is as follows:

> ART. 5. The measurements of lands shall be as follows:
>
> Supposing the varas for measuring to be 3 geometrical feet, a straight line of 5,000 varas shall make a league; a square which, on each side has 1 league, shall be called a *sitio*, and this shall be the unit for counting 1, 2, or more *sitios*.

The law of January 25, 1825, of the State of Jalisco (Code of Colonization, p. 197) further illustrates this as follows:

> Second. They [lands] shall be divided into *sitios* and farms. Sitios shall contain a league in a square of 5,000 varas, or what is the same thing, 25,000,000 square varas.

So also the law of December 15, 1826, of the State of Tamaulipas (Code of Colonization, p. 214), which is as follows:

> ART. 14. A square of land which on each side has a league, or, which is the same thing, an area of 25,000,000 square varas, shall be called a *sitio*, and this shall be the unit for counting 1, 2, or more sitios.

To the same effect (Code of Colonization, p. 259), is as follows:

ART. 13. For the survey of lands a vara of 3 geometrical feet shall be used. The farm shall be a square that has 1,000 varas on each side, and the *sitio* another square with 5,000 varas also on each side.

A contemporaneous construction of the meaning of *sitio* is found in the Nogales or Ainsa *expediente*, dated in 1841. That grant, like Cameron's, which was for the raising of cattle, is described as being composed of "sitios for raising cattle and horses," so that the meaning of *sitio* as there used will be strongly persuasive of what is meant in this case. In the Ainsa case we have a construction of this matter, not by a subordinate official, but by the treasurer-general himself, by José Maria Mendoza, the very same officer whose name appears so frequently in the *expediente* and *titulo* forming the basis of this claim. Let us see what Treasurer-General Mendoza thought of the word "sitio" and its meaning:

On May 26, 1841, Mendoza, then bearing the title of superior chief of the treasury, issued an order for a survey of the vacant public land adjacent to the lands of Casita and also for a survey of the *demasias* of said ranch, this proceeding being preparatory to a sale of the same to certain parties who had filed an application therefor. In issuing this order Mendoza gives certain directions as to how the *sitios* are to be measured. These are in part as follows:

He * * * shall adjust the *sitio* or *sitios* contained in said lands of Casita, their overplus, if any there be, and the vacant public

> lands already mentioned, strictly by said regulations and the *inveterate* and *constant* rule of multiplying the number of varas contained in the diameter from north to south by that of those contained in that from east to west, to give to each *sitio* the area that corresponds to it, of *25,000,000 square varas.*

The report of the survey in that case shows that this "inveterate and constant rule" was strictly followed, with the result that there resulted within the ranch of La Casita "*the same nine sitios* the original surveyor, José Olare, measured and estimated on the 28th day of April, 1742, and 9,200,000 square varas more, *which do not make half a sitio.*" As to the survey of the public lands the report was "that they contained 340 cords from north to south, and 222 from east to west, which, reduced to varas and multiplied one by the other, give an area of 188,700,000 square varas, that make 7½ *sitios* and 2 caballerias, a little short, for raising cattle."

Reducing their theory to practice, it was urged by claimants on the trial that, considering the grant as one of 4 *sitios*, such *sitios* should be considered as the 4 segments into which the tract within the monuments would be subdivided by lines running through the center and connecting the side-line monuments; in other words, that 4 *sitios* should be adjudged by this court to be 150,000 acres, and 1 *sitio* to be one-fourth thereof, i. e., 37,500 acres or thereabouts. The "inveterate and constant rule" above set forth, however, makes a sitio 25,000,000 square varas or 4,338 acres. It is not believed that the ability or ingenuity of counsel can

induce this court to increase a *sitio* eightfold from the extent as observed when José Olare made his Casita survey in April, 1742; an extent observed from 1742 to the Mexican independence, and declared by the officers of Sonora to be the inveterate—*inveterada*, "rooted"—and constant rule for laying off a *sitio*. It is the duty of this court to give claimants only what they would have gotten under the Mexican Government, and stop there. As was said in the Supreme Court in *Ely's case* (171 U. S., 239):

> No duty rests on this Government to recognize the validity of a grant to any area of greater extent than was recognized by the Government of Mexico.

This rule applies as much to the question of the extent of the Mexican *sitio* as it does to the broader question of area, to which it specially refers in the opinion just quoted from.

9. As little worthy of serious notice is the contention urged by claimants in the court below that this grant carried at least 16 *sitios*, based on the fact that there were 200 cordels measured to each cardinal point from the center. Since the title papers distinctly show that only *4 sitios* were petitioned for, offered for sale and paid for, and since, as above seen, the extent of a *sitio* is well fixed under the Mexican law, it is arguing against the clearest and most conclusive proof to the contrary to urge that 4 *sitios* means 16, and that each *sitio* was, as a matter of fact, 4. The explanation of the discrepancy lies in the very evident fact that the surveyor by

mistake laid off 16 *sitios* instead of 4. Instead of running 100 cordels on each course from the center he ran 200 cordels, thinking thereby that he was laying off 4 *sitios*, when in fact he was laying off 16. His error seems to have been overlooked by the officers to whom his field work was returned, but when title or patent was issued it was for 4 sitios and not for 16; and it is the title or patent which fixes the rights. As was said by the court below in the Ainsa or Nogales case:

> The patent or grant is the evidence of his title—that is, it operated to convey to him the only right which he acquired in the property under the proceedings * * * It seems to us impossible that his rights could be enlarged beyond the express terms of the sale and grant by the proceedings which preceded the sale. Those proceedings were essential, perhaps, under the law. They do not, however, constitute the sale and were merely preliminary to it.

The intent and purpose of the granting officers were to convey 4 *sitios*, not 16. They showed this by offering for sale only 4 *sitios* and demanding pay for only 4 *sitios*. The intent and purpose of the grantee was to acquire title to 4 *sitios*, not 16; otherwise he committed a fraud on the Government in not paying for 16, since he knew that under the law each *sitio* had a specific value and must be paid for. As one of claimant's counsel very properly conceded in his brief: "We frankly admit that the bidder '*supposed*' that the total quantity of land contained within those boundaries was only 4 *sitios*." The granting officials certainly sup

posed the same thing. We have thus the theory upon which the parties acted, their intention governing the transaction. What is the duty of the Government therefore? To effectuate that intention or to ignore it? Certainly, there can be but one answer to that question, and that is that this Government, to quote again from *Ely's Case* (171 U. S., 240), is under no moral or legal obligation to consider as granted any excess over the actual area mentioned, but may "justly and equitably treat the grant as limited to the area purchased and paid for." It is certain that the Mexican Government would never have treated this as a grant for 16 *sitios* when only 4 were paid for. An illustration of its attitude toward excessive measurements is given in the San Pedro case (*Reloj Cattle Company* v. *United States*, No. 30, present term). There the grant is measured not from a center but from an exterior corner, the evident attempt being to measure off a square, the sides of which are given as 250 cordels each. This makes an area of 6¼ *sitios* within the measurements, although the title papers call for a grant of only 4 *sitios*. According to counsel's contention this is a good grant for at least 6¼ *sitios* on the theory that the 4 *sitios* as defined by the survey are not 4 *sitios*, but 6¼. It happens, however, that the Mexican Government in *1880–1888* acted upon this grant (see Government's Exhibit 5 in the San Pedro case) and laid off on petition of the parties at interest the extent of their *cabida legal*, and this as recognized by the Government is not 6¼ *sitios*, but 4 *sitios*, thus showing that

the Mexican Government in passing on these documents for the purpose of determining how much they convey disregards a plainly erroneous calculation and recognizes only what the parties "supposed" they were receiving and what as a matter of fact they did receive. From all this it is plain that a *sitio* is still a *sitio* as it was in 1742. It is no reflection on the eminent ability of claimants' counsel that they are unable to make it more.

10. With this digression for the purpose of considering the contentions urged as to the size of a *sitio*, we come back to the question of how much passed by the terms of the grant. The instruments themselves and the practical construction given them by the parties have just been considered, and it has been urged on behalf of the Government that they convey only the quantity named and no more. Let us see what authority we have for this construction. Obviously the two highest sources of authority to which we can look for a construction of these documents are the two nations which have had to deal with this character of instrument, Mexico and the United States. In the United States, certainly, we can find no higher construction than that given in this court, and in Mexico none more reliable than that given by its highest public officials. Let us look to these two sources of information.

11. If any question has ever been settled by this court, it is the proposition that the character of title document here presented conveys only the quantity

named. It seems unnecessary to do more here than simply to cite the following cases:

Ainsa v. *United States*, 161 U. S., 208.
Ely's Administrator v. *United States*, 171 U. S., 220.
United States v. *Maish*, 171 U. S., 277.
Perrin v. *United States*, 171 U. S., 292.

The Maish case is especially in point, since in that case there was absolutely nothing causing a reversal by this court but the clean-cut question of quantity; and that question was decided as here contended for by the United States.

12. It is claimed, however, that there were brought to light on the trial of this case below additional facts and arguments which were not before this court on the argument of the cases above cited; and that this court should therefore not feel called upon to follow those decisions. It is urged, for instance, that at the time the Ely and other cases were under advisement by this court it was without the benefit of Mr. Bonillas's testimony as to the customary presence within the monuments of Mexican grants of an excess over the area actually sold, a subject, which it is urged, has been gone into very fully by Bonillas on the recent hearings. Counsel for the Government do not share in the belief that the amount of erudition injected by Mr. Bonillas into the record just made up is sufficient to cause the wheels of jurisprudence to turn backward and this court to reverse itself in at least four of its decisions. The suggestion made by claimants' counsel as to the radical influence which

the testimony of this witness will have in causing this court to change its views is, it is believed, born of an exaggerated notion as to the importance of Bonillas's theories on questions of law and of fact. Whatever may be the skill of Mr. Bonillas as a monument finder and an identifier of boundary calls at places not hinted at in the *expediente*—peculiar qualities which have appeared in a number of these Arizona records—it is not believed that had every syllable which he has injected into the present record been before this court in the other cases, it would have made a particle of difference in the result, would have caused it a moment's additional hesitation in deciding those cases, or would have swayed it a hair's breadth from the conclusions announced in them. This for the double reason that nothing Mr. Bonillas has of late testified to has been instrinsically startling, and for the further reason that everything material as to which he gave testimony at the trial of this cause was before this court in the spring of 1898, when the Ely and other cases were decided. The principal additional light Bonillas is supposed to have thrown upon the record is the fact that in all or almost all of these Mexican grants there is a considerable excess, within the monuments, over and above lands paid for. This, however, is no novel proposition; it is new neither to the court below nor to this court. Mr. Bonillas testified to the same facts in the *Faxon case* (171 U. S., 244), argued along with the other cases, so that these facts, in so far as they are material, were fully within the

knowledge of this court at the date of those decisions and long prior thereto. Indeed the Nogales or Ainsa decision is based upon the very matter of excess; that claim is founded in part upon the denouncement of *demasias* or excess; and section two of the law of May 12, 1835, which is set out in full in the Ainsa decision, expressly recognizes the fact that there is to be found a surplus or excess in many of the grants issued by the State of Sonora and makes provisions whereby parties may secure title thereto. Thus, there was before this court in the Ainsa case all that Mr. Bonillas has lately testified to. In addition, Mr. Bonillas's Faxon testimony was referred to and quoted by Mr. Ford in his brief in Ely's case (p. 7), so was before this court when that case was decided; and in Mr. Ford's additional brief in the same case (p. 8) there is quoted the Mendoza letter of 1829 (Tipton-Flipper report, p. 84), wherein the great excesses of area within monuments, over area purchased, was fully discussed. To any one who will take the trouble to read the briefs in this court in the cases above referred to, it will be readily seen that all that Mr. Bonillas's testimony in the case tends to establish was before this court as an admitted or fully established historical fact in the other cases. To say that the solemn decisions of this court in at least four cases shall be disregarded because, forsooth, it has just come to light that the Alamo de Sevilla and a dozen or so other grants in Mexico have excessive areas within their surveys, is to ask this court to ignore the rule of *stare decisis* and

to say that its decisions, however solemnly pronounced, conclude nothing.

13. It was further argued in the court below that the proceedings under Mexico leading up to the issuance of patent constitute a judicial determination of the location and extent of the several grants, and is "entitled to the credit that is given to the decision of a court as to all legal presumptions in favor of its regularity and conclusiveness." This contention seems to be based upon the rather elaborate proceedings provided for in the Sonora law of May 20, 1825. As the San Rafael de la Zanja titulo is dated May 15, 1825, it is clear that the Sonora law just cited and the argument based upon it are inapplicable. But even if this argument as to a judicial determination of the question of boundaries, etc., by the Mexican Government were one not urged by claimants on the appeal in the Ely and other cases, it would still not justify this court in disregarding that decision. While new facts may change the complexion of a cause on second appeal, new or ingenious arguments, which might have been urged on the former record, will not justify a modification of a former decision. (*Ellis* v. *State Ins. Co.*, 68 Ia., 578.)

However, this argument was urged on the appeal in at least one of the cases above cited, that of Perrin, and whatever force it had was undoubtedly considered by this court in the decision in that and the other cases then decided. At pages 51, 53, 55, and 57 of the brief filed by Mr. Morgan in that case this same argu-

ment appears, clothed in the force and plausibility which characterize all of that gentleman's utterances, and yet despite this argument the Supreme Court held that Perrin should have only his 8 *sitios* and Ely's administrator only his $1\frac{3}{4}$ *sitios*. Certainly this court is not called upon to do more for Cameron than it felt called upon to do upon the same character of *expediente* and upon the same argument for Perrin, Maish, and the Ely estate. The decisions above cited are conclusive upon this question as they are upon most of the other contentions raised by claimants. Were the matter one for original discussion, however, it is not believed that there are grave difficulties either upon principle or upon authority in establishing that the officials charged with administering the law passed upon no questions except those purely incidental to the issuance of the title for the number of *sitios* named. They were not judicial officers (*Ainsa case*, 161 U. S., 233), and decided nothing in any of these cases that can be distorted into an adjudication that the title to the whole tract within the monuments passed, or that the title to anything passed, except to the number of *sitios* paid for.

14. It is further contended by claimants that the expression alleged to be found in this *titulo*, "appurtenances, metes, and *boundaries*," distinguish this case from those passed upon heretofore by this court. It seems sufficient to say that these words are apparently not found in the San Rafael de la Zanja title; but even if they were, they are also found in the Ely, Maish, and Perrin title papers, and were discussed before this

court in connection with those cases. (See claimants brief in Ely case, p. 122; same in Maish case, p. 50; same in Perrin case, p. 53.) The argument here presented, then, is nothing novel, and it is distinctly foreclosed by the decisions of this court.

15. It was also urged that all doubt as to "the intention to cede all the land within the designated boundaries" is removed by "juridical possession delivered to the grantees;" and to sustain this view the well-known line of California cases as to the force and efficiency of delivery of juridical possession as a judicial determination of boundaries is discussed. It is sufficient to say as to this that the same argument was pressed before this court in the Ainsa case. (Mr. Ford's brief, pp. 4–12.) The opinion of this court upon this very point is found in 161 U. S., 240. In this respect the Ainsa case has never been overruled, but has been steadily adhered to in all the cases since determined.

16. It is further urged that this grant should be held good to the extent of the survey, because it has been occupied to the outboundaries, and on the further ground of a prescriptive title flowing from such possession. The same view was urged in Ely's case, and was promptly disposed of by this court (171 U. S., 238), where it is said:

> So the silence and inaction of the Government and third parties are not strange, and create no presumption in favor of the validity of the grant to the extent of the survey.

17. From a careful consideration of these Supreme Court cases, therefore, it must be conceded that the

main question of quantity has been already settled, so far as it is possible for a court of last resort to settle any question; and that in rendering those decisions this court has given due weight and consideration to every argument advanced on the trial of the present case. Having considered, therefore, how the courts of this country have construed the character of grant document here presented, let us turn now to the practical construction given them by the officials and laws of Mexico.

18. It was the policy of Spain for at least from 1700 to 1821 to pronounce condemnation upon those who possessed large areas of lands in excess of their titles, and the royal decrees all provide for a revision of titles, and the failure to present them for revision (composition) operated as an abandonment and an equivalent to formal denouncement. (See Hall's Mexican Law, Ch. IV, and cedula of 1754, ibid., Ch. V.) The laws of Mexico and the State of Sonora relative to *demasias* proceed upon the same theory, that possessors of excess over their lawful titles were detainers without title as to the excess, and recognized no obstacle, either moral or legal, to the exercise of the *jus disponendi* by those governments.

19. The very first law which claimants' counsel invoke in support of one of their contentions—the State law of May 12, 1835—shows that these grants *ex proprio vigore* carry nothing more than the quantity named. This law provides that parties who, under the boundaries set out in their proceedings of survey,

occupy any surplus lands become entitled thereto "without other obligation than to pay for the excess," etc., and provides that the land shall be adjudicated to whoever denounces or applies for it "only in case the holder does not need the surplus or when the latter is very excessive in the opinion of the Government based on the report of the Treasury." But if the holders of these grants had by virtue of their language title to the whole, what was the purpose of providing a system by which they might become entitled to the excess? If they owned the whole, where was any excess? If they owned the whole, what right had the State of Sonora to provide conditions on which they might acquire a portion? Or what right did the State have to say that others should have the surplus in case the owner did not need it? Or to say that others should have the surplus in case the latter were excessive? Why all this talk and all this litigation about surplus, excess, *demasias*, if the owner held title in fee to all? Surplus, excess, *demasias* of what? Evidently of something which the owner held. But if he held the whole, where was the excess, the surplus, the *demasias?* Suppose, however, we assume, as this court has decided, that the amount granted was the quantity named, we then have in the case of surveys inaccurately made a surplus or excess, title to which the State of Sonora by this law of 1835 says can be acquired by performing certain things. This construction makes the law of 1835 intelligible and significant; the other makes it a mere play upon words and worse than senseless.

20. The letter of February 23, 1839, signed by José Maria Mendoza (Tipton-Flipper Report, p. 84), is also significant. Mendoza was at the time superior chief of the treasury, and this communication was addressed to no less functionary than the secretary of state and of the department of the treasury, at the City of Mexico. Certainly, this is on its face a valuable source of construction for a grant made about that time; and yet we find Mendoza there referring to the "large number of grantors who appropriate considerable *excess* of *sitios* which are wanted by breeders, who need them, and defended by those who are in possession of them, and *said excess* arising from the fact that ancient surveyors, from ignorance or bad faith, *to measure two sitios measured four and to measure that number measured eight or more sitios*," etc. On page 87, also, he refers to "resurveys of certain portions applied for to determine their *excess*." To quote these extracts from official correspondence is all that is necessary to show that under the Mexican system there was no grant or title to outmonuments, natural or artificial, but simply for a certain quantity, resulting in the "considerable excess." If, where surveyors ran off 4 *sitios* for 2 and 8 for 4, title passed to 4 in one instance and 8 in the other—the precise argument made by counsel in this case—it is difficult to know why the superior chief of the treasury would have been worried about the matter or why he would have made it a subject of official communication with the secretary of state of the Republic. If the whole was private property, his letter would have been

the veriest folly, for there would have been no "excess" to write about, much less to "ascertain by resurveys," and the land being the property of the individual would not in the least have concerned the State on a question of revenue or otherwise.

The Nogales *expediente* (*Ainsa* v. *United States*, 161 U. S., 208) is also most interesting on this question. There, the court will recall, was a proceeding instituted in 1841 to denounce *demasias* within a ranch granted in 1742. If the views of prescription urged by counsel here as applicable to a grant of 1821 or 1831 have any force, they would certainly have had force as to a grant a hundred years old in 1742. If the grant here claimed was good to outboundaries, certainly the Casita grant, dignified by a century's possession, was good to the outboundaries; and yet we find the owners of that ranch not relying on prescription, not claiming that their grant included all the land within the monuments, not calmly awaiting the action of the Government to ascertain an excess over their 9 *sitios* and thereupon unwillingly paying the amount found due into the treasury, all of which counsel urges that they were privileged to do. But what? An application filed by them, not by the Government, asking a resurvey, an offer to pay for the excess and a *request for a título* for the excess. But why a resurvey if they owned all, and had ever since 1742? Why an offer to pay, if they had in 1742 paid for all by paying for 9 *sitios*? Why a desire for a *título* to the excess if they had a title already good for every foot within the monuments? To ask these questions is to

answer them. They owned 9 *sitios* and *no more;* hence they took the only method of securing title to the balance, and that was by appropriate petition, resurvey, payment, as in the case of the original grant.

22. It was urged by claimants on the argument, however, that if parties were always subject to having their lands surveyed and payment enforced for a proportionate balance of the purchase money, there would never be an end to the proceeding; that if the first survey was erroneous the resurvey might be erroneous and a resurvey of the resurvey might be, and so on *ad infinitum.* The Sonora government guarded against this very contingency, however, in its provision of the law of 1835, to the effect that "in lands measured by estimation, excess or deficiencies shall not be so considered when they do not exceed half a sitio." In this very Ainsa case the excess proved to be less than half a *sitio* and was disregarded.

It is altogether beyond the range of probabilities to assume that a second survey of a tract would ordinarily or frequently leave an excess of more than half a *sitio,* so that counsel's difficulty exists more in the imagination than as an actuality. Should such a case arise in the future, however, there is no doubt that the Mexican Government would permit an unlimited number of successive surveys as long as the excess remained above a half *sitio.* Indeed, in some grants situated within the Republic, there have been instances where several successive resurveys have been necessary before the requisite minimum of *demasias* was reached.

23. The Ainsa expediente is most instructive on another point, and that is as to the degree of importance attached by the Mexican officials to *quantity*. From the argument of counsel for claimants one should suppose that the former Government was entirely careless of its lands; that it was so anxious to get this public domain off its hands as to force it on its people *nolens volens*, or to give it away for the asking, without money and without price. They would have us believe that the former Government would ignore, as too insignificant to take thought of, a slight discrepancy of 100,000 acres as in the Babocomari claim, or 130,000 acres as in the Agua Prieta, or the petty excess of 140,000 acres in the San Rafael de la Zanja; but what was true as a matter of fact? In the Ainsa claim the surveyors, according to their field notes, included a tract 340 cordels from north to south and 222 from east to west, which they reported to "include 7½ sitios." Upon multiplying these figures out, however, the area was found to be 188,700,000 square varas, or 211 acres in excess of the amount stated. The Mexican officials, however, did not ignore or overlook this; they did not take the view that the land was valueless and that it was to the advantage of the nation to have it occupied without payment on the part of the occupant; on the contrary, they recalled that the necessities of the Government demanded revenue, and that its laws throughout were primarily for the purpose of raising funds and not for colonization. They accordingly charge up these 211 acres, or "2 *caballerias*, a little

short," as they are called, to the denouncers, who, upon paying the equivalent reals and grains therefor, secured title to their *caballerias.* Can anyone who scans this transaction believe that these officials intended to sell 16 *sitios* for the price of 4, or 160,000 acres for the price of 4, in the San Rafael de la Zanja proceedings? Or that they intended to give title to Perrin's predecessors in interest for 130,000 acres for the price of 8 *sitios?* This is as incredible as is the idea that the parties who purchased considered they were entitled to an acre more than the quantity paid for.

24. Another construction of this question of extent is found in the Rancho de Bacatete. (Tipton-Flipper Report, p. 91.) In that case the proceedings begin February 14, 1842, with petition of José Maria Duarte to the departmental treasurer, and states that the original *expediente* had been sent to Mexico and lost. He petitioned for resurvey and issue of title. This was granted, but the resurvey showed more land than had been paid for in 1812, and the *claimant was ordered to pay for the excess.* Other instances of denouncements and *demasias* given in that report are case 128, pages 74–75, and case 135, page 79; in each of these instances the proceedings for a resurvey and for title to the *demasias* being initiated by claimants and not by the Government.

25. The very expression "*cabida legal*" (legal area), as applied to the quantity purchased, as distinguished from the amount within monuments, is significant. In the Ainsa case this is expressed in another form where

the direction is given for the surveyor to proceed "to the exact and scrupulous resurvey of said lands, giving them the area or number of *sitios that legally belong to them*, with due *separation* of the *sitio* or *sitios* that result in excess within the lawful boundaries of said lands of Casita." Certainly claimants can not with justice claim more than the number of *sitios* paid for, that being, under the Mexican construction of 1842, all that "legally belongs to them."

26. Mr. Bonillas, in his testimony (R., 234), stated that he had found in the archives at Hermosillo, Mexico, an *expediente* of the resurvey of the Chupisonora grant, wherein the state surveyor says:

> Article 4 of law number 197 of the 14th of May, of the present year (1852), leaves the selection of the land to their titles to the possessors. When he was going to locate the *cabida legal* of the grant he states this and summons the owners so that they will make the selection.

Since the trial of the cause representatives of the Government have secured from Hermosillo a copy of this law, and a translation thereof is attached to this brief as Appendix 2. From section 2 of that law it will be noted that *demasias* are considered to be "those that may be found within the true outboundaries of the grant titles," and "they shall be excessive when they amount to the third part of the land which said titles may contain." It is further provided (section 3) that when the said *demasias* are *not* excessive the possessors may apply for them with proof of having sufficient means for stocking them, and in that event they

shall be adjudicated to them without public auction at the rates then (1852) in force. If the possessors do not want them they are to be adjudicated to denouncers on like terms, but should the *demasias* be excessive, then they shall be sold to the highest bidder.

If claimants are correct, then, although the original grantee owned all the land, the Government by this beneficent law gave him the privilege of buying a part of what he already owned, if he wanted to do so. If not, then someone else might buy it, not from him, "the owner," but from the Government. Further, that although the grantee owned all the land, if he wanted to buy a part of it he must pay the price prevailing, not at the date of the grant, but in 1852, and even his right to buy some of his own land was limited, since if the *demasias* were excessive or more than one-third of the legal area, he had no prior right to purchase at all, but the land must be sold at public auction to the highest bidder. This was a truly wonderful system, indeed, if claimants' theory as to the status of the title to the land within the boundaries is to be indulged; and the beauty of this theory becomes even more apparent when we consider section 4 of the law, which provides that the possessors within the general area are allowed to select the principal land (the cabida legal) that may best suit them, provided they leave the *demasias* regularly united in one body in order that the treasury may alienate them to advantage. This indicates as clearly as human language can indicate, that in 1852 the title to the whole tract was not vested in the grantee, but

only that quantity for which he had paid, the rest being reserved in order that the treasury might alienate it to advantage, and that the Government gave him a right to locate his *sitios* anywhere within the boundaries, extending the right because the land within the boundaries was the Government's, not his. Many absurd things have been attributed to the Mexican officials in the course of this litigation, but it is not believed that anyone would impute to either the nation of Mexico or its subdivisions the extreme absurdity of proceeding to allow a grantee to locate his *sitios* anywhere within *his own lands*. Such generosity is beyond human comprehension, and yet the argument of counsel for claimants is in effect that the grantee owned the whole tract, and at the same time the Government gave him a right to locate a fixed quantity anywhere within what he already owned.

27. The course of the Mexican Government from 1853 to the present time shows that the only title held by the grantees is the title to the actual number of *sitios*. Thus the law of July 22, 1863 (Hall, p. 173), provides how parties in possession may obtain title to the lands they occupy. The provisions of this law cover possession of lands whether held as *demasias* or as lands without grant at all. They are broad enough to include both, and in contemplation of this law both seem to be on the same basis. In either instance, whether land be held by mere squatters' right or claimed as a part of a grant in excess of the *cabida legal*, denouncement is made, survey follows, the purchase

price is paid, and the denouncer gets title. In several of the Arizona grants recently tried by the court below proceedings of denouncement of the *demasias* were had in Mexico under this law. Thus, in the Agua Prieta case (*Ainsa* v. *United States*, No. 35, this term, R., 215), *demasias* were denounced by the owners of the legal area in 1880, and after full proceedings title was issued upon payment of the tariff rate for the current year. So in the San Pedro case (*Reloj Cattle Company* v. *United States*, No. 30, this term, p. 255), where the *cabida legal* of 4 *sitios* was laid off and payment accepted and the title issued for the balance. In the Buena Vista case (*Maish* v. *United States*, No. 268, October term, 1900), also, the *cabida legal* was laid off and title to the *demasias* granted by the Mexican authorities to the three denouncers. In this last instance it is to be noted that none of the denouncers of the *demasias* were interested in the *cabida legal*. Mr. Bonillas testified also that he had made a large number of surveys of *demasias* in Mexico, and gave a list of the grants in which he had done this (R., 444). In every one of these cases the proceedings were under the law of 1863 (R., 226), providing a method of obtaining title by denouncement and payment of purchase money. And under this same law, even this very grant, the San Rafael de la Zanja, sacred as claimants say it is, from San Antonio Pass to Igo's and from the Jaralito to the red mountain, and dedicated as was every foot of it by the proceedings of 1821 to the uses of the grantees and their successors in title, has (so far as it lies in Mexico)

been denounced as public land and title therefor issued by the Mexican nation. There is something of irony in the fact that the denouncer of it as public land was Concepcion Elias, the very witness presented by claimants to identify its ancient and inviolable limits; and that the present owner of it claiming by Mexican patent treating it as public lands is Ignacio Bonillas, the very surveyor presented by claimants to show the location of those same ancient and inviolable monuments.

28. This law of 1863 was superseded in 1894 by one making similar provisions for acquiring title by petition, purchase, and payment. Throughout this uniform course of legislation there is present the same principle, that the title to the surplus of these grants is in the nation, that all that passed to the parties was title to the specific quantity, and that whether or not they afterwards obtained title to the balance is entirely dependent upon whether they pursued the methods provided by law for attaining that end. One thing, however, is clear from the reading of these laws, and is made still clearer from an examination of the exemplified copies from Guaymas in evidence, and that is that the original concession never gave title to more than the quantity. Counsel for claimants have failed to produce a single instance where one of these grants has been held by virtue of its terms to convey the fee to the extent of its survey. The unbroken construction in hundreds of instances is to the contrary, and it seems idle to argue the subject in view of the uniform construction given these matters by the Mexican au-

thorities. If the fee to *all* passed by the original *titulo*, why should legislation be provided to enable grantees to get title to the balance? What balance? If the fee to all passed, why require parties to make additional payment? They had already paid in full. If the fee to all passed, how can strangers to the original title, as in the Buenavista case, come in and get title to all except the *cabida legal?* It is not believed that there can be any question in the mind of the court that the original grant documents here presented passed title to not a single acre beyond the number of *sitios.* To hold otherwise is to ignore every authority, American or Mexican, to which we are justified in looking for a solution of the problem.

29. It is said, however, that this is manifestly a grant to exterior limits, for the reason that if considered one by quantity, and if located from a center point, as set forth in the decree, it will not include the *quality* of land sold to the grantees; that the amount paid the Mexican Government was for *3 wet* and *1 dry sitio*, and that a limitation to the 4 leagues at the Bonillas center will not give this character of land, which was the object aimed at in the original proceeding and the consideration for the purchase money. It is to be remarked, however, that even if the confirmation given by the court limited the quality of *sitios* below the quality paid for, a confirmation to the boundaries would immeasurably exceed it. Thus, even Mr. Bonillas admits (R., 155) that 7 or 8 wet *sitios* are found within his survey. The Government

witness Chalmers, and others, place the number much above that. So that counsel apparently contend that because the 4 *sitios* centering at the old Indian ruins do not contain 3 wet and 1 dry *sitio*, therefore they are entitled to a confirmation of a tract including four times as many wet and twenty-five times as many dry *sitios*. It is an argument that works both ways, and, to say the least, quite as forcibly against the proposition urged by claimants as in favor of it. But do 4 *sitios* located as in the decree fall below the *quality* prescribed in the titles? It is believed not. It would seem that the error of claimants' counsel arises in part from a misapprehension by them of the meaning of wet *sitios*. Thus, it was contended in the argument below that there was a difference in price between *sitios* on which a spring was located and those through which a stream ran. It is not believed that any law can be found to sustain this theory. The law of May 20, 1825 (Reynolds, p. 129), provides that the price for each *sitio* that has a "spring or river" shall be $60. Thus it is seen that the price was the same whether a spring or river was on the land. It is to be noted, further, that this price was not contingent on there being water at every point of the river within the *sitio;* since one spring—a single source of water—fixed the price at $60, so a single source of water in a river would suffice. Further, there is no guaranty in the law that the river would never go dry; the element present in fixing the price was the existence of "a river" within the *sitio*. As a matter of fact almost

all rivers in the western country go dry at certain seasons. (Kinney on Irrigation, secs. **39**, 44, 45.) The Rio Grande, the father of most of them, is dry for many miles during a portion of the year; but *sitios* through which the Rio Grande runs and in which it occasionally goes dry would no less be *sitios* "that have a river." So, because in the dry season the Santa Cruz is without water in some places for a couple of miles, is no reason why the *sitios* through which it runs are not through its entire length *sitios* "that have a river." Further, the appraisement in this Cameron case was made in October, a season when, according to the proof (R., 157, 169, 174), the rivers and springs have, perhaps, their greatest permanent flow. The appraisers fixed the price by what they saw at that time, based upon the lands as they existed at that time. Further, there is abundant proof to the effect that there is now much less water in the Santa Cruz Valley than in times past. Geological changes have caused a diminution in the water supply, but the principal cause of the difference has been the introduction of cattle into the country, by which springs that formerly existed have been tramped out and obliterated, or the headwaters of streams likewise destroyed by the removal of trees and vegetation by the hand of man. All of these factors must be taken into consideration; and the fact that there is not such an amount of water present now at these several center points as would lead claimants, if now making an appraisement *de novo*, to call them wet *sitios*, affords no

ground for declaring that eighty years ago there was no ground for the appraisers to call such wet *sitios*. The appraisement was no guaranty. It was simply an estimate based on the facts then before the officers—facts which might or might not have changed with the years as they rolled by. The appraisers examined the ground in October, and declared that there was enough water then upon 4 or 3 or 2 *sitios* to justify them in estimating that in the aggregate payment should be made for 3 *sitios* as wet out of the total 4. They decided that 4 *sitios* in the Santa Cruz Valley, starting the measurement from the place of San Rafael, were 3 wet, 1 dry. Their decision was not appealed from; was acted upon; was accepted. It is rather late to attack that judgment now. It is a *non sequitur* to argue that because there is not enough water on the Santa Cruz River now at and about old San Rafael to make what claimants consider the requisite *wet* sitios, there was not enough in 1821 to make what the appraisers considered the necessary number. It is their judgment eighty years ago, not claimants' in 1899, that is to govern.

30. But, as a matter of fact, on the records here presented, *sitios* laid off from center points, as contended for by either claimants or the Government, would in each instance contain the requisite number of *sitios* "that have a spring or a river." Counsel for Claimant Cameron contended in his brief filed below as follows:

> The evidence further shows that if a tract of land containing 4 *sitios* is measured in a square,

> taking the center of the grant as the center of such tract, the tract of land so secured would contain only 2 *sitios* having running water instead of 3 *sitios* with running water

In making this statement counsel evidently took into account only the northwest and southeast *sitios* and failed to take into account the southwest *sitio.* This latter, however, is a S60 *sitio,* as well as the others, and on two grounds: It is one of "those that have a spring" and one of "those that have a river." The spring within this *sitio* is called the Saucito. Witnesses who were in the country long before Mr. Cameron testify to the size and permanence of that spring and to the fact that it was used for watering stock when they were first in that country. So far from being a mere seepage, as counsel attempted to argue, the testimony of three or four witnesses is that the spring, ever since they have known it, has been a constant one, the water from which at times flows into the Santa Cruz River, nearly a mile distant. This testimony is uncontradicted in the slightest particular, Mr. Cameron, who went on the stand in rebuttal, having very discreetly abstained from referring to the subject at all. Further, an inspection of the maps filed by claimants shows that their center monument is east of the Santa Cruz River. A *sitio* lying to the southwest of and cornering at that center, therefore, necessarily contains a portion of the river, and if the east boundary of that *sitio* be a line due south from the center, nearly the whole of the river bed will be found to lie within it. That the river at the time Mr. Bonillas made his

observation was dry at this particular point does not detract from the fact that it is a river or from the fact that there is in this same *sitio* a spring, yielding a steady flow of water. Since either of these circumstances is sufficient to constitute a wet, or S60, *sitio*, this southwest *sitio* is thus the third of the *sitios* necessary to fill the call of the title papers as to quality. A similar number of the same kind of *sitios* may be located centering at the old place of San Rafael, the center point contended for by the Government. The same state of facts will be found to exist in the Agua Prieta grant (*Ainsa* v. *United States*, No. 35, present term), in which a claim for *demasias* is likewise made.

B.—*Was the law of 1835 a grant de novo or revalidation of the excess?*

30. If the title to only the named number of *sitios* and no more passed by the original *titulo*, it is further urged by claimants that the Sonora law of May 12, 1835, was a grant *de novo* or a revalidation to the parties of any excess within the monuments over the quantity named. This brings us to an examination of this law and its purposes.

31. It is to be observed that the grant here considered was made prior to the law of 1835 just cited, and hence such privileges as it grants were no part of the original contract between the parties. They did not buy with this law in view, because it was not yet in existence. It did not enter into or color the transaction and no vested rights to the privileges it extended

became the grantees' at the date they secured this grant or paid their money. Any privileges conferred upon the grantees by it were purely in the nature of a gratuity based upon no consideration, and extended as a matter of grace.

32. It may well be doubted if this law applies to any grants made by authority other than the State of Sonora. The wording of the law is in favor of "those who have acquired property in the lands of the State." As Sonora did not become a part of a State until January 31, 1824, when the State of the West was organized, and did not become a separate State until October 13, 1830 (Comp. Laws of Mexico, vol. 2, p. 231), when Sonora and Sinaloa were divided, the law of 1835, under this view, has no application to grants where the sale and payment were made to and the transaction closed with officers other than those of the State of Sonora. To this class belongs the San Rafael de la Zanja grant.

33. The purpose of the law 51, of May 12, 1835, was not to make a grant *de novo* or a grant at all to parties holding lands by tenure short of title. It was a revenue measure pure and simple—a statute of composition, an offer of sale, a privilege extended upon liberal terms. It forced no title on any one, it invested no one with title, but it extended a generous invitation to those who were occupying lands without title to cease living on the property of the nation. Recognizing that they may have made improvements, it provided that they might purchase these lands on

payment at the original schedule rate. That its character was simply a revenue measure is shown by the letter of Mendoza of February 23, 1839, above quoted from, in which Mendoza starts out by stating that "one of the *sources of public revenue in this department* is that from the composition and grant of lands for breeding cattle and horses," follows by a statement of the difficulties encountered, among them the fact above discussed, that considerable excess of *sitios* had been appropriated by grantees, 2 *sitios* being measured as 4, 4 as 8, etc., and then proceeds to say:

"In *consequence* the honorable Congress of the old State, during the Federal *régime*, notwithstanding the existing laws on lands, saw itself under the necessity of enacting other laws and decrees relating thereto, numbers 10, 26, *fifty-one*, 62, and 75, of May 30 and July 11, 1834, *May 12, 1835*, June 13 and July 17, 1835," etc. The laws of May 30, 1834, and July 11, 1834, appear at pages 184 and 186 of Reynolds's Compilation and contain provisions or systems of raising revenue from public land. The law of May 12, 1835, is *in pari materia*, a revenue measure, a plan not to give parties land, but to afford them an opportunity to acquire land upon exceedingly liberal terms, a liberality doubtless due to the stress of the great public necessity for funds to carry on the purposes of the Government.

34. Coming now to the wording of the law of 1835, it is to be remarked that counsel for claimants have, at the very outset, fallen into error in supposing that this law declares that the persons referred to in articles 1

and 2 are "the *owners* in good faith" of the lands they occupy. The proper translation is that they are "the possessors in good faith." The Spanish is "poseedor en buena fe." Poseedor does not mean owner. The definition given in Escriche's "Diccionario de Legislacion y Jurisprudencia" (9th edition, 1888) is:

> Possessor: He who has everything in his possession. Possessor is opposed to owner; because the possessor of a thing, accurately speaking, is not the owner, nor is he who has the property in a tract said to be its possessor. But he who has a thing as owner is called possessor, without really being such, whether he knows or is ignorant that the thing belongs to another. Every possessor is a possessor in good faith or a possessor in bad faith.

From this definition it will be seen that so far from declaring the possessor to be the owner, this law uses language which makes against the idea of ownership and simply declares that the possessor shall not be considered as occupying the land in bad faith as a trespasser, but "in good faith," with the privilege to him of securing the property or title by appropriate proceedings. (Hall's Mex. Law, sec. 1711.)

35. This is shown by the remainder of the law. If the owner does not denounce the *demasias*, any stranger to the title may at any time come in and denounce. If on resurvey no surplus is found, the denouncer gets none and has to pay for the resurvey. If, on the other hand, there is a surplus or excess, and that excess is not very great, the Government says to the owner

of the *cabida legal*, you may still get these *demasias* if you need them. But if, "in the opinion of the Government, based on the report of the treasury," this surplus is very excessive, the Government shall have the right to decline to issue title either to the owner of the *cabida legal* or to any one else. Since the question of what is very excessive rests "in the opinion of the Government" and is necessarily a matter of judgment based upon the location of the land, the amount of stock held by the owner of the *cabida legal*, his needs, etc., it is a very wide discretion and its exercise a final judgment from which there was no appeal. In effect, whether or not the owner of the legal area should get the *demasias* rested in the sound discretion of the officers of the Government, based "upon the report of the treasury." Not only did the "possessor in good faith" not have title, he had no *right* to acquire title by payment of the prices in force at the date of the grant. His only right was to appeal to the Government officials with an offer to pay, and they thereupon, if the amount asked for was in their judgment not excessive, *might* accept his offer and his money and give him title. The great difference between the legal area of 16,000 acres in this grant and the total area of 160,000 acres immediately arrests attention. The attention of the court has been elsewhere called to the fact that in none of the grants testified to by Mr. Bonillas as having been surveyed for *demasias* by him (a list of which he tendered as a part of his testimony), is there a grant with anything like a ratio between total and legal

area of ten to one. The amount here claimed is both unusual and extremely excessive, as shown by Mr. Bonillas's testimony itself. There is little doubt that it would have been held excessive by Mexican officials acting under the law of 1835. At any rate there is not the slightest doubt that they would under the law *have had the power and the right* to declare it excessive and to refuse to issue title thereto. Any such right held by that Government is held by the American Government, as its successor in sovereignty, and this Government has in effect already held that such surplus is excessive in that it has issued its patents to numerous parties for lands within the claimed boundaries. These latter acts constitute on the part of the Government a resumption of sovereignty or a declaration of the possession of sovereignty such as was discussed in *Repentigny's case* (5 Wall., 211), and there held to be the equivalent of "office found" at common law.

36. This law of 1835 being therefore a revenue measure and affording a mere invitation to parties to acquire title and a process by which they might acquire title, it is clear that it created no vested right. Being no part of the original contract between the parties it created no vested right as a matter of contract. Being a mere privilege extended by the Government upon no consideration moving from the grantee to the Government, it created no vested right as a matter of law. Since it was not a vested right, but a merely proffered one, it was within the power of the Government to withdraw it at any time before acceptance, or by the

change of government to a system inconsistent with its administration to make it of no effect.

37. If the law of 1835 was not repealed and its privileges withdrawn by the change from State government to National Government effected by the constitution of 1836, that result was certainly reached in the enactment of the Sonora State law No. 197, of May 14, 1852, above referred to. That law, which is comprehensive of the whole subject-matter of the law of 1835, undoubtedly superseded it. Under its provisions the owner of the *cabida legal* could no longer obtain the *demasias* by paying for them "at the price that governed when it was surveyed and appraised," as provided by the law of 1835; he must now pay at the rates in force at the date of the passage of that law, *i. e.*, May 14, 1852, and he must, in addition, prove to the satisfaction of the officers his ability to stock the *demasias*. Even this privilege was restricted in the quantity of the land thus attainable and in the time within which it could be obtained. By sections 2 and 3 it is provided that when the quantity of *demasias* is excessive, they shall be sold to the highest bidder. What is "excessive" under this law is left not to the judgment of the officials, as under the law of 1835, but is defined by the law itself to be cases where they amount to the third part of the land which the title may contain. Even where the *demasias* are not excessive, parties can not secure them "without public auction unless the original *expedientes* are presented to the treasury within one hundred days

from the publication of the law" (section 11). Since the *demasias* included within this San Rafael de la Zanja grant are vastly excessive under the definition of this law, it follows that in 1852 the owners of the San Rafael de la Zanja grant could not have secured a foot of land in addition to their *cabida legal* except at public auction, and that even if such *demasias* were *not* excessive, said owners must still have resorted to public auction to secure the *demasias*, there being no proof that they ever presented their *expedientes* to the treasury within one hundred days as required by said law. The acquisition of *demasias* was thus placed by this law of 1852, when applied to the title papers in this cause, on precisely the same footing as the acquisition of public land; and *demasias* then became in procedure, as they were before in fact, public lands of the state.

38. At the date of the Gadsden treaty, in 1853, all such public lands as were held by the States, including *demasias*, as just pointed out, were in the ownership of the nation. This is evidenced by the decree of May 29, 1853, one that has always been regarded as the law of Mexico and is found in volume 6, page 427 (No. 3866) of the Compiled Laws of Dublan y Lozano, published under authority of the Mexican Government. That decree is as follows:

MAY 29, 1853.

Decree of the Government:

Antonio Lopez de Santa Ana, etc., has been pleased to decree:

In order to carry out the purposes of article 16 of the law of the 14th instant, and to the

end that the directions [offices of directors] mentioned therein may be able to collect data on the different branches that now form the public treasury, exactly classified in the Memoria, they must present to the secretary of the treasury, it is declared:

ART. 1. The following belong to the dominion of the nation:

I. The vacant lands in all the Republic.

* * * * *

X. The real property which under former laws are the property of the nation.

ART. 16 of the law of May 14, 1853, above referred to, is, with other articles, in the following:

May 14, 1853. Decree of the Government.

Antonio Lopez de Santa Ana, etc., has seen fit to decree the following:

* * * * *

ART. 2. The property (*bienes*) of which the supreme government is in possession, and that which is considered as of the States and Territories, remains after this date at the disposition of the first, assuming its burdens.

3. The taxes and other general revenues of the States and Territories likewise remain at its disposition, and in the same terms.

* * * * *

6. The chief of the office of the treasury of the highest category there is in each State shall, for the present, exercise the functions which the law of April 17, 1837, assigned to the superior chiefs of the treasury.

* * * * *

> 16. The data concerning the branches under its charge having been collected in each direction, it shall present a memoria to the secretary of the treasury, in order that the Government, when informed of the number and nature of those branches, of the quotas, their products and otherwise, may determine what is conformable to a good administration of the treasury.

39. So by the Gadsden treaty all of these *demasias*, for which no denouncement had been made or title issued prior thereto, passed to the United States along with the remainder of the public domain, to be administered upon by this Government, not under an obsolete law of the State of Sonora, passed in 1835, or the law of 1852, or under the laws of the Republic of Mexico affecting its public domain in 1853, but under the laws of the new sovereign, the United States, as its lawmaking power should from time to time provide for the disposition of its public land.

40. As was said in *Pollard's Lessee* v. *Hagan* (3 How., 219, 225):

> Every nation acquiring territory by treaty or otherwise must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.

41. Had this land remained in the Republic of Mexico in 1853, instead of being ceded to the United States, it could not have secured as *demasias* between 1853 and 1863 by payment of the price in force at the date of the grant. This for the reason that the privilege afforded by the State of Sonora in 1835 was manifestly not in force, and for the reason that there was no

law of the National Government between those dates affording grantees a like privilege. This is illustrated by the papers in evidence in the Agua Prieta case (*Ainsa, administrator*, v. *United States*, No. 35, this term, p. 354), where litigation was had between the Camous and the Elias family over the ownership of that ranch and the kindred ranches of Naidenibacachi, etc. The Camous claimed to have purchased the whole ranch in 1862 from the Eliases, the Eliases, on the other hand, claiming that they had sold only the *cabida legal* of 16 *sitios* and *had retained the balance*. To this the following significant reply is made in the pleadings for Camou:

> On the other hand, it does not appear in the deed of sale that the vendors had reserved any right whatever with respect to the aforesaid overplus (*demasias*), nor could such reservation exist, inasmuch as at the time of its execution *they belonged to the federation, and it was not until the 22d of July, 1863* [the date of the *demasias* law of 1863], when the President of the Republic, competently authorized, conceded to the possessors and *by way of grace the authority to denounce them* to the extent they had for a certain remuneration.

It does not appear that the district court, in deciding the case, directly passed judgment on this point, but the decision was in favor of the Camous.

42. The law of July 22, 1863, was a comprehensive scheme for disposing of the public lands. It was not peculiarly a law for the sale of *demasias*, but *demasias* were sold under it, for the simple reason that they were

public lands and thus within the purview of the law. Thus, article 1 of that law (Hall, § 613) defines public lands for the purposes of that law, declaring:

> All those lands in the Republic which have not been destined to public use, by the authority empowered therefor by law, nor granted by the same, with an onerous or lucrative title, to any individual or corporation authorized to acquire them, are public lands for the effects of this law.

The section of the law under which *denasias* were uniformly denounced for thirty years is article 5, which specifically recognizes that such denouncement is of public lands, being as follows:

> The possessor of a *tract of public land*, of whatever extension it might be, which at this date is cultivated or bounded with a ditch, fence, or artificial landmark, placed at least in all the angles of periphery, has a right to have one-half of the tariff price rebated, if he has had possession for ten years or a title translative of dominion, although it be granted by him who has no right to grant it.

Thus, under this law of 1863 the owner of the *cabida legal* has no title to the remainder of the land within artificial landmarks. On the contrary, the law speaks of these as "public land," and the only privilege which possession conferred was the right to acquire title by regular denouncement and the payment for the land at the same rate that would be paid for public domain, except where the possession has been held for ten years or the party holds a title translative of dominion. The documents introduced by the Government

in the Agua Prieta case (*Ainsa* v. *United States*, No. 35, this term, p. 212), show that the Mexican officials did not regard the original *titulo* of the grant as "a title translative of dominion" of the *demasias* so as to entitle the party to the reduction of one-half the price. Thus, in the proceedings for denouncing the Agua Prieta *demasias*, the owners did not base their claim to the reduction on the ground of having artificial landmarks and a title translative of dominion, but upon the combination of artificial landmarks and ten years' possession prior to the denouncement; and even this contention the Mexican officials overruled, holding that the ten years' possession entitling the owner of the *cabida legal* to half rate must have been ten years prior to July 22, 1863, not ten years prior to the denouncement. It was not until the Camous proved possession for ten years prior to 1863 that they were given title at the half rate allowed by section 5. And yet, according to claimants' contention *number one*, the Camous had title to the *demasias* during all this long struggle by them to secure said *demasias;* and according to claimants' contention *number two*, they had title to these *demasias*, subject only to the duty of paying for them at the price in force at the date of the grant. The practice of the Mexican officials, followed for thirty years, of demanding for these *demasias* the full price required for public lands, shows that this is not true; and certainly it would be a matter of supererogation for an American court to assume that it knows more about the construction of Mexican law than the Mexican officials charged with its administration.

43. That this construction of the law of 1863 is correct, and that the *demasias* of this grant were public property at the date of the treaty and have since always been so considered by the Mexican officials is shown by the following extracts from an official report made in 1885 by the minister of public works of Mexico to the Chamber of Deputies in the Mexican Congress:

[From the official report of the minister of public works to the Chamber of Deputies of Mexico, 1885, pages 9, 10, and 11.]

The law of July 22, 1863, treats of these overplus lands (*demasias*) in its articles 5, 6, 7, and 8. (Hall, p. 173.)

The executive has considered the *demasias* under two classes: The excess (*excedencias*) of lands where the excesses are protected by titles, their boundaries fixing a greater extension, and those which do not have the circumstance, because their titles are restricted to an extension less than that they possess, but which are protected by possession according to law.

The first are those possessed by virtue of the fact that when the titles were issued, either because of special circumstances of the places where they were situated or because of the lack of competent persons to make the survey, or because of the lack of instruments of precision, specific boundaries were designated, protecting only a certain amount of land, which amount, when the survey is made, turns out to be much larger than set out in the titles.

These lands are further divided into two classes: Those the sale of which was made *ad*

corpus—that is to say, all the area comprised within specific boundaries, which lands are lawfully possessed—and those the sale of which was made *ad mensuram*—that is to say, that *within specific boundaries* a specific amount of land was sold, which amount would have to be rectified at some time, as is now being done.

I call the attention of the chamber to the fact that in all these titles there is the clause that said lands were sold without prejudice to the King, which proves in a manner not to be doubted that only a specific amount was sold and *that any excess (sobrante) that might be found, when the measurements are rectified, belonged to the Crown, and now, as a logical and necessary consequence, to the nation.*

The second are those which proprietors have occupied in good or bad faith, extending the boundaries of their property, without being protected otherwise than by possession.

In either case *the nation has a right to these demasias* and it is its unavoidable duty to investigate them, in order to dispose of this element of public wealth according to law.

In order to carry on the investigation of said overplus (*demasias*), it is necessary to comply with all the provisions of said laws of July 22, 1863, and of the 15th of December, 1883, following the judicial procedure provided in the same. Consequently, no kind of abuses can be committed, there being therefore, no cause for the alarm among owners which has been spoken of on the floor of that chamber. It is possible, nevertheless, that some owners have become

alarmed, but they are, without any doubt, those who are occupying lands and are ill disposed to make use of the right given them by the law of July 22, 1863, in its fifth and sixth articles, or because they erroneously interpret the investigation by the companies which are acting in the representation of the Government, for those who possess land in good faith, on the contrary, have seen, in the measures of the executive, the lawful and honorable manner of legalizing their properties, avoiding conflicts for the future and giving their lands a real value, which their properties could not have when their titles were doubtful. These assertions are duly proved by the petitions presented to the department of public works by various owners, in which they themselves voluntarily denounce the overplus (*demasias*) which they have been possessing, and ask to enter into agreement with the Government.

44. The law of 1863 was superseded by the law of 1894, authorized by the Mexican Congress and promulgated by President Diaz in March of that year. This law (chapter 1, article 1) is entitled a law "regarding the holding and selling of *public lands* in the United States of Mexico."

Article 1 provides:

> The lands dealt with in this law, *which are national property*, shall, for the purpose required, be divided into the following categories: 1, Vacant lands; 2, surplus lands (*demasias*); 3, excess lands; 4, national lands.

Surplus lands (*demasias*) are defined by this law, (article 3) to be those held by private persons on primordial title, and to a greater extent than specified, such surplus, however, being within the boundaries mentioned in the title and consequently mixed up in its entirety with the area for which a title is held.

Thus in a law passed by the Mexican Congress and promulgated by the Mexican Government it is declared that "*demasias*" are among the lands "which are *national property*." Certainly no more authoritative source of construction can be found.

45. Mr. Orozco, at page 345 of Vol. I, thus discusses this law of March 26, 1894:

> We have already said that this overplus (*demasias*) consists of agrarian quantities which result within a well-identified perimeter, between the area covered by title and the area which the perimeter fixed by the respective title incloses *de facto*. Thus, for example, if the title concedes 1,000 hectares [2,471 acres] of land within fixed and determined monuments, and upon a new examination of it it is demonstrated that within those monuments there is not 1,000 but 1,500 hectares [3,706 acres], this excess of 500 hectares [1,235 acres] is what is to-day called national overplus (*demasias nacionales*).

Why "national property" or "national overplus" if private property?

46. Under this law, as under the law of 1863, *demasias* were denounced as other public lands and title issued only on payment of the price fixed for

lands by the tariff of that particular year. In this law, as in the law of 1863, a certain reduction from this price was made in the case of parties who have held possession of such lands as *demasias* or otherwise. This, however, was a concession to the equity arising from the possession, not to any right arising from the fact that these are *demasias*. It is a gratuity extended by the Government of Mexico not because of any right inhering in the owner of the *cabida legal*, but purely in the exercise of the governmental discretion and sovereign privilege of dealing with its subjects, or, as it is expressed in the Agua Prieta papers above quoted, "by way of grace."

47. This is shown in the price fixed upon the *demasias* by the laws of 1863 and the law of 1894. Unless there should be the element of possession to give the denouncer the right to a deduction from the price, he was required under each of these laws to pay for the *demasias*, not at the meager price which prevailed at the date of the grant, but at the tariff price in force for public lands for that year. This tariff under the law of 1863 (Hall, § 615) was published by the supreme general government every two years. Under the law of 1894, article 12, it is fixed by the Executive of the Union by means of a decree "to be published in the month of January of each year." A party denouncing these *demasias* in Mexico at any date between 1863 and the present time would have had to pay for them at the rate fixed for the particular year; and yet claimants here insist that the United States is bound to issue them a patent on

payment of the petty sum charged for sitios eighty years ago under the Spanish Government. In determining what right, if any, claimants have under the law of 1835, this court will not go far wrong in following the consistent construction given it for the last sixty years by jurists and legislators in Mexico. The law of 1835 made no grants *de novo;* it gave no vested rights. It conferred no right at all. To say that the offer it made could not be withdrawn is to say that Mexico had no right to supplant the law of 1863 by the law of 1894; that the United States had no right to repeal the laws providing for acquiring public lands by the preemption process (Frisbie *v.* Whitney, 9 Wall., 187); that no Government has a right to change the process by which its citizens may become the owner of portions of its public domain. The various grantees of this grant slept on their opportunities for acquiring title to their lands while such opportunities were open to them; they can not ask this Government to administer a Mexican system sixty-five years later, when they could not have that system administered were they now in Mexico and could not have had that system administered at the date of the treaty of 1853.

48. Claimants seek to avoid the position just advanced in the contention that all the legislation of Mexico since the law of 1835 is unconstitutional so far as it raises the price to be paid for *demasias* under the Sonora law of that year. They contend that the President of the Mexican Republic in 1863 did an unconstitutional act when he promulgated the law of July

22, 1863; that the Mexican officials have acted unconstitutionally in administering this law for thirty years; that Mexican jurists have been wrong in following it for thirty years, and that the Mexican nation has tolerated a usurpation of power in obeying it without a murmur or dissent for thirty years. Have the learned counsel ever heard of an instance where the constitutionality of this law has been questioned in Mexico? Are they not aware that ample methods of testing the constitutionality of any law is provided by the Mexican system? Have they ever heard of an instance where those methods were invoked for the purpose of testing this law? If so, they have signally failed to furnish such an instance. And the law of 1894; after having tolerated, as counsel claim, an unconstitutional law for over thirty years, we have the spectacle presented of the Mexican Congress enacting and the Mexican President approving a law equally unconstitutional, equally abhorrent to the principles of property. But, as to this law of 1894, can counsel cite an instance of its being questioned, of its justice or legality being protested against? Certainly, an American court should long hesitate to declare a foreign statute void when the people who have lived under it have by word and act for generations declared it valid. As was said in *Hornsby's case* (10 Wall., 224):

> We can not, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than they received from the Mexican authorities who were intrusted with their execution.

There can not be left with the court a more cogent statement of the principles that should control this branch of the case than is contained in the words of Chief Justice Marshall from the case of *Elmendorf* v. *Taylor* (10 Wheaton, 152).

> No court in the universe which professed to be governed by principle would, we presume, undertake to say that the courts of Great Britain or France, or any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal to correct such misunderstandings.

C.—*Were the demasias private property protected by the Gadsden treaty; and if so, is a claim to them cognizable under the act of March 3, 1891?*

49. The third contention of claimants apparently is that there was in the grantees at the date of the treaty a vested interest in the *demasias* and that such interest was and is a right of property protected by the treaty. In what has just been said the writer has attempted to demonstrate that neither under the law of 1835 nor any other law of Mexico was there a right to the *demasias* vested in the grantee, but that the *demasias* were public lands or national property subject to disposition under such legislation as the authorities might from time to time enact. If that position be sound, the case ends with its acceptance. If it is not, there still remains to be considered the question as to whether the claim here asserted is such a property right as is protected by the treaty and is cognizable by this court under the act of 1891.

50. No provisions of the treaty of 1853 are more familiar to this court than those contained in article 6, to the effect that no grants made previous to September 25, 1853, will "*be respected or be considered obligatory which have not been located and duly recorded in the archives of Mexico.*" It is contended by the Government that there was no such location or record of this grant as was required by the treaty, and that it is thus not within the terms of the act of 1891.

51. It is true that an arbitrary location might be made by this court, as was done by the court below, giving the claimants 4 leagues of land included within the outboundaries; but it is not believed that this court will, in the desire to give parties a quantity of land equal to what their predecessors in title purchased from the Mexican Government, overlook the plain limitation imposed upon the Court of Private Land Claims in passing upon this character of title. This involves a brief consideration of what that limitation is. It is to be noted that the above-quoted provision of the treaty applies not to invalid but to valid claims—claims which but for this provision would be entitled to recognition. There must have been some purpose in ingrafting this provision upon the Gadsden treaty. The United States had but five years previously, in dealing with the Mexican Government, concluded a treaty by which a vast area of land was transferred from Mexican to American sovereignty. The Gadsden treaty adopted most of the provisions of the Guadalupe-Hidalgo by reference, but in dealing

with the matter of grants an addition was made to the treaty, as above set forth. What was the purpose of that addition?

52. There was no requirement in the treaty of Guadalupe Hidalgo that the lands granted should be located prior to the treaty, the result of which was that large masses of land, particularly in California, were reserved from settlement and sale by reason of being within the exterior boundaries of some Spanish or Mexican land grant, and to guard against the repetition of such conditions this provision was inserted in the treaty of 1853. A comparison of the provisions of the two treaties will clearly show this distinctive difference. It is a universal rule of construction of all contracts and agreements, of particular force when construing the solemn acts of two sovereign nations, that every sentence, every phrase, and every word contained in the instrument shall be given some meaning, if possible. Particularly is this the case when two instruments of similar character have been made between the two parties, one of which differs from the other. In such case courts must conclusively presume that for some good reason such a difference was made, and must give force and effect to the difference, if possible. In this case the only difference between the two treaties is the word "located," and in compliance with the well-settled rules of construction it is the duty of this court to give that word some meaning. Now, what can it mean unless it applies to a grant like this? It can not apply to a general float—that is to say, to a grant of indefinite

quantity, or grants with the right to locate anywhere—for such grants have been universally held to be void by this court without any such words in the treaty, and there is no class of grants to which this word can apply except to that most common class of grants of a specified quantity of land within exterior boundaries containing a larger quantity. If, then, as has already been said, this be a grant of four *sitios* of land to be located within exterior boundaries containing thirty-five *sitios* in excess of that quantity, and the same was by the terms of the treaty to be located before it could be recognized by this Government, and if in fact it had not been located prior to 1853, this fact makes it unlawful for the Court of Private Land Claims to confirm this grant, and this court is bound by the provision creating the court from which this appeal is taken.

It happens that the first of these land cases from Arizona to come before this court for consideration on the question of quantity was this very San Rafael de la Zanja claim under the title of *Cameron* v. *United States* (148 U. S., 301). This court, in deciding that case in 1892, left to the Court of Private Land Claims, which had just been created by Congress, the question of the true extent of that grant under the title papers, but, in passing upon the title papers there involved, says:

> While a grant of 4 leagues in the place called San Rafael de la Zanja standing alone would appear to have been a grant of a certain quantity of land, when it appears by the same instrument that the limits of the grant were to be

designated by landmarks of stone and mortar, that such designation was actually made, and that juridical possession of the land was delivered in pursuance thereof, it is at least open to doubt whether it does not fall within the class of concessions by specific boundaries as these grants are distinguished in *United States* v. *McLaughlin* (127 U. S., 428). *Under the view taken by the court below*, that the grant was only 4 square leagues of land, it was evidently a mere float, and defendant would have no color of title to any specific land until the same was designated and would have no authority to monument and fence on any part of the tract.

As the court below, and this court in other cases, has limited the character of grant now under consideration to the quantity paid for, those holdings, if now sustained and adhered to, bring the case entirely within the rule announced by this court in the case above cited and quoted, to wit, that this grant is a mere float, and is precisely of the character of grants disclosed in the *McLaughlin case* (127 U. S., 428) and the *Fremont case* (17 How., 542). The nature of a float is further discussed in the cases cited, and in *Cameron* v. *United States* (148 U. S., 309); also in *United States* v. *Armijo* (5 Wall., 445), *Miller* v. *Dale* (92 U. S., 473), *Carpentier* v. *Montgomery* (13 Wall., 480), *Hornsby* v. *United States* (10 Wall., 232), *Snyder* v. *Sickles* (98 U. S., 203). In the McLaughlin and Fremont cases, especially, the character of title here asserted is discussed, and in these and the other cases above cited is pointed out the fact that a Mexican grant of quantity, located

within exterior boundaries containing a greater quantity, does not, until located, take precedence over a grant made subsequently within the same outboundaries but located first. The identity of the character of title here asserted with those shown in California cases in which this court held, as above set forth, that a grant under the conditions developed by this record was a float, is made quite evident by the more recent case of *Ainsa* v. *United States* (161 U. S., 208), involving the Nogales grant, and the construction placed upon the sixth article of the Gadsden treaty in that case was again announced in the case of *Ainsa* v. *New Mexico and Arizona R. R.* (175 U. S., 76, 84, 85) involving the right on the part of the claimant of the Sonoita grant (*Ely's Administrator* v. *United States* 171 U. S., 220) to proceed upon it in the local courts as a complete and perfect title during the interval between the establishment of the Court of Private Land Claims on March 3, 1891, and the institution of the suit by the United States to test the validity of that claim, where Mr. Justice Gray for the court says (pp. 84, 85):

> The treaty of December 30, 1853 (known as the Gadsden treaty), by which the Mexican Republic ceded to the United States additional territory now within the Territories of New Mexico and Arizona, including the land in controversy in this case, provides, in article 5, that all the provisions of the eighth and ninth articles of the treaty of Guadalupe-Hidalgo shall apply to the territory thus ceded "and to all the rights of persons and property, both civil and ecclesiastical, within the same as fully and as effectually

as if the said articles were herein again recited and set forth;" and, in article 6, that "no grants of land within the territory ceded" bearing date since September 25, 1853, "will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico." (10 Stat., 1035.) This last clause has been held by this court to require an authentic survey and final determination of the location and boundaries of the claim. *Ainsa* v. *United States* (1895), 161 U. S., 208, 222. But in the case at bar the plaintiff set up a complete grant, surveyed and located by definite boundaries long before September 25, 1853.

That case, however, was submitted to the court below on an agreed statement of facts which located the grant by definite outboundaries.

53. The contention of claimants in the court below was, however, that the *Ainsa* (Nogales) decision, so far as it holds such grants not to have been located at the date of the treaty, has been overruled by the later cases of Ely and others. These last cases proceed on the theory that a center or initial point being established, such point locates or nails the grant to the earth's surface, and it thereupon becomes a mere matter of mathematics to lay off the grant according to the measurements and quantity. Since the hearing of these cases the existence of law number 197, of May 14, 1852, has, however, been for the first time developed, under the terms of which it appears that the owners of the *cabida legal* were given the right to

locate that quantity at any point within the boundaries at their option.

54. Section 4 conferring this right is as follows:

> The possessors within the general area of their titles may select the principal land that may best suit them, provided they leave the *demasias* regularly united in one body in order that the treasury may alienate them to advantage.

Where the "possessors" fail to appear and locate their quantity that power seems to have been exercised by the Government surveyor. This is shown in the Chupisonora *expediente*, the one referred to by Mr. Bonillas in his testimony, and a copy of which has been secured from Mexico since the trial below. From that *expediente* it appears that the Government officer who made the resurvey notified the owner of the legal area to appear and to select his quantity as might best suit him within the outboundaries; the latter failed to do so, whereupon the officer set apart for him the quantity originally purchased, locating it so as to include the improvements made by the owner.

Under the terms of this law it is apparent that the location of the quantity within the outlimits was a matter, in the first instance, for the owner, or if he failed to act then for the Government. If the *sitios* purchased were all dry and were, for example, 4 in number, where the monuments inclosed 8 or 16 dry *sitios*, any 4 out of these 8 or 16 *sitios* could, under this law of 1852, be selected by the owner, and until so selected his grant was a float and unlocated. It was a right to 4 *sitios* anywhere within certain limits; or,

as said by the court below in another case, "the grant was specific as to quantity, but not as to location." In other words, it was precisely like the California grants, such as that mentioned in the *McLaughlin case* (127 U. S., 428), except that in the latter cases the right of location was reserved to itself by the Government and in the former cases it was, by the law of 1852, given, in the first instance, to the owner of the *cabida legal*. In either event, not being located at the date of the treaty, such a grant is not protected by the Gadsden treaty.

55. The argument of counsel that this grant is distinguished from the California "floats," in that in those cases the excess "was always expressly reserved to the sovereign by a conditional clause in the title papers," is answered by the court below in the Ainsa decision, where it is said: "The intent of the granting officer to reserve to the Government the excess over the amount granted within the boundaries is as clearly manifested as it could have been made by a reservation in express language."

56. It is not sufficient to say that the land is located by the "quality" mentioned in the *expediente*. In not a single case now before the court would the application of this principle remove the element of uncertainty. In Cameron's case, the *expediente* calls for 3 wet *sitios*. According to Mr. Bonillas's testimony there are no less than 6 or 8 wet *sitios* within his survey. The Government witnesses make the number much greater. Which 3 of these 8 or 12 wet *sitios* is meant by the title papers? Does it identify any 3 of them as *the* 3

in a manner such as enables the court to say those are the 3 contemplated by the grant? If not, and if the designation of the particular 3 was left open for the future selection, choice, or location, and such selection had not been made at the date of the treaty, then the grant was unlocated at the date of the treaty. So as to the 1 dry *sitio* in the Cameron's case. Where is this located? There are 40 *sitios* in the grant. Deducting the 10 or 12 that are wet, there are still 30 dry, any one of which answers the description of the *titulo* as to quality. If the owner of the legal area has the right to locate his dry *sitio* anywhere he desires within these 30, and at the date of the treaty had not done so, his grant was unlocated. The same state of fact is illustrated in Perrin's case (*Perrin* v. *United States*, No. 97, this term). There 6 wet and 3 dry *sitios* were granted. The proof shows that within the survey there are no less than 10 or twelve wet *sitios*. Which 6 of these were granted? Which 2 dry *sitios* of the remaining 20 dry *sitios* were granted? The remaining grants now pending before this court have the same state of facts, leading to the irresistible conclusion that since the location of the *cabida legal* was a matter of choice for the grantee under the laws of Mexico (as shown by section 4 of the law of 1852), and as that choice had not been exercised at the date of the treaty the grants were not located at that date.

57. The court below, following certain intimations in *Ely's case* (171 U. S., 241), held this to be a grant for 4 *sitios* centering at the point adopted by Bonillas

as his center or initial point, apparently holding that the existence of this center fixed the *locus* of the grant at the date of the treaty and thus brought it within the terms of the treaty. While it is true that the grant as confirmed by the court gives the quantity and the quality as stated in the titles (as has been already pointed out), it is not the only location that will do so within the outboundaries. A half dozen other locations could be made to give claimants four sitios, three wet and one dry; which one of these locations is to control? And is a choice of location to be made *now?* Must it not have been made at the date of the treaty to entitle the claim to recognition? It will not do to say that claimants did not know at the date of the treaty that they were holding more than 4 *sitios* within their survey of 40. Such an assumption, as will hereinafter be pointed out, is to presume against their sanity. It will not do to say that they had no opportunity to locate their legal area. The law of 1835 and the law of 1852 gave them this privilege. If they saw fit to ignore this opportunity, and came within the limits of the United States holding an unlocated grant, they must suffer the penalty imposed by the treaty, which is the loss of their lands. Counsel for claimants indeed admitted in the argument of the case below that if this was not a grant to the exterior boundaries, then it was never located and is not entitled to confirmation under the English version of the treaty.

58. Nor can it be contended that the original survey of 1821 was a "location" of the grant that satisfies the

terms of the treaty. Under the original proceedings "only a specific amount was sold and any excess that might be found when the measurements were rectified belonged to the Crown, and afterwards as a logical and necessary consequence to the nation." (Official report in 1885 by the minister of public works of Mexico to chamber of deputies, quoted *supra*). This was the law when this grant was made, and was as much a part of the grant as though actually recited in it. The intent to reserve to the Government the excess over the amount granted within the boundaries was "as clearly manifested as it could have been made by a reservation in express language." It can not be presumed that the grantee did not know he had more than 4 *sitios*. Such a tract is a square with sides 2 leagues or about 5 miles in length. The original surveyor says his sides are 4 leagues or 10 miles. The Bonillas survey has sides of from 15 to 20 miles. Knowing as the owners must have known that they were holding more than they had paid for, they had ample opportunity to secure the balance. This opportunity was given by the law of 1835, but they failed to act upon it, although scores of others were doing so. It was given them by the law of 1852, and yet they failed to accept it. Although for eighteen years before the treaty—assuming that the law of 1835 was the first Mexican legislation providing a method for the acquisition of the excess—they had the privilege of segregating their legal area and getting title for the *demasias*, they failed to do so. The

date of cession came; their granted quantity was still, using the language of the law of 1863, "mixed up in its entirety with the area for which a title is held;" they had taken no steps to segregate it, to locate it with respect to the remaining 140,000 acres, within the boundaries; and the two contracting nations stipulated that grants "not located" shall not be recognized by the American Government. Is this treaty provision to be respected or is it to be ignored?

59. The question is not what parties claiming under these grants could now get under Mexico were the property still in Mexico, but what under the treaty which fixes the obligation of this Government and the jurisdiction of the court they are entitled to receive from the United States. It might be conceded in any one of these cases that claimants could now, by virtue of the law of 1863 as modified by that of 1894, secure recognition of and the privilege of locating their *cabida legal* were they in Mexico, but it does not follow from this that they are entitled to the same thing from the United States. Their rights under the United States are limited by the terms of the treaty, and it is to be repeated that the limitations imposed by article 6 are limitations upon the recognition not of void but of valid grants, thus showing that it was the intent of the high contracting parties in 1853 to stipulate for the nonrecognition of certain grants that Mexico itself would have recognized, and did recognize, as valid. The fact that such selection and location of the *cabida legal* had not been made at the date of the treaty precludes recognition under the treaty.

60. Another treaty barrier to the confirmation of this grant is the fact that it is within the class of claims denounced by the treaty as not "duly recorded in the archives of Mexico." As was said in the brief for the United States in the Ainsa case:

> A proper construction of this provision of the treaty requires that the existing state of the law should be considered; that is to say, the laws of the country in which these records or archives were to be found. It is well known as a matter of history that the manner of preserving records of grants and other important instruments in Spain and Mexico was different from that which obtains in this country, and that the customary manner of preserving records of proceedings leading up to a grant in Mexico was to deposit the original in the archives and give to the proper party a copy of such original, which was known as the testimonio, duplicate, or second original. There was also a requirement that a memorandum of the grant should be entered in the proper book, called "Toma de Razon," and when a history of the original proceedings (*expediente*) was properly deposited in the archives and a minute of the grant entered in the "Toma de Razon" this constituted a record of the grant, and when these two steps had been taken the grant had been "duly recorded" as provided by the treaty, and until both these steps had been taken the grant had not been "duly recorded."

61. It seems unnecessary, as showing what is meant by a "record," to do more than to cite the court to the long line of California cases, beginning with *Fuentes*

v. *United States* (22 How., 443) and running down to *Peralta's case* (3 Wall., 434). In *Luco's case* (23 How., 515) it was held that no grant should be received as genuine by the courts of the United States "unless it be found noted in the archives, or the *expediente*, or some part of it, be found on file among the archives where other and genuine grants of the same year are found." In *Bolton's case* (23 How., 347) it was held that the record referred to in the regulations of 1828 is "the *evidence* of the grant," and that while the titulo given by the governor "serves among individuals the purpose of evidence," the Government, when it institutes inquiries in reference to the subject, is "entitled to require the production of that official record which it has prescribed to its officer for its own security and as a necessary condition of a legal administration and as a necessary precaution against fraud." So *Vallejo's case* (1 Black, 541), quoting *United States* v. *Sutter* (21 How., 175), says that "in every well-regulated government the deeds of its officers conveying parts of the public domain are registered or enrolled to furnish permanent evidence to its grantees of the origin of their title." So, in the *Peralta case* (3 Wall., 434), it was said:

> But the important fact to be noticed is that a record was required to be kept of whatever was done. This record was a guard against fraud and imposition and enabled the Government to ascertain with accuracy what portion of the public lands had been alienated. The record *was the grant* and without it the title was not

> divested. The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession, but his "*titulo*" did not divest the title unless record was made in conformity with law.

To the same effect are the *Teschmaker case* (22 How., 405), the *Pico case* (22 How., 406), the *Castro case* (24 How., 346), case of *Knight's administrator* (1 Black, 228), *Neleigh's case* (1 Black, 298), *Romero's case* (1 Wall., 743). *White's case* (1 Wall., 660), the *Berreyesa case* (23 Lawyer's Coop. ed., 912), and the more recent cases of *Ortiz* (176 U. S., 422), *Elder* (177 U. S., 104, 118), and *Whitney* (181 U. S., 109).

Perhaps the latest expression from this court on this point is found in *United States* v. *Elder* (177 U. S., 118), where this court, speaking through Mr. Justice White, says:

> The constituents of the preliminary papers leading up to a grant and of the grant itself, and the distinction between them, to which attention had been so often directed by this court, was pointedly reiterated in the statement of the case made by Mr. Chief Justice Fuller in *Ainsa* v. *United States* (161 U. S., 208, 219), as follows:
>
> "An expediente is a complete statement of every step taken in the proceedings, and a testimonio is the first copy of the expediente. A grant of [or?] final title paper[s] is attached to the testimonio and delivered to the grantee as evidence of title, and entry is made at the time in a book called the Toma de Razon, which

identifies the grantee, date of the grant, and property granted."

It is manifest from the foregoing review of the decisions under the California act that it was held that in order to vest an applicant under the regulations of 1828 with title in fee, either absolute and perfect, or conditional and imperfect, to public land, substantial compliance with the preliminary requisites to a grant was essential. It was necessary that a grant should be evidenced by an act of the governor, clearly and unequivocally conveying the land intended to be granted, and a public record, in some form, was required to be made of such grant.

62. From these cases and from the usages of the officials of Mexico, known to this court as a matter of history connected with this litigation, the presence of the *expediente* in the archives and an entry of the issuance of title in the book of Toma de Razon together make up the record. There is no proof of a *toma de razon* having been made of the San Rafael de la Zanja grant.

63. It is sought to obviate the force of this defect in this case by the following indorsement, found at the end of the *titulo* presented by claimant:

> Entry of this title is made at folio 3 of Book No. 2 that exists in this commissariat.

It does not appear when or by whom this indorsement was made. For aught that appears to the contrary it may have been made years after the treaty, and by an entire stranger to the transaction. Its presence is thus no evidence of the fact that such an entry

was made. But even had it been established that this indorsement was made by the officer issuing the title, it would still not establish that an entry was made in such a book. Such a recital would stand on no higher ground than a recital that the prerequisites for a grant had been complied with, and it is distinctly held in the case of *Fuentes* v. *United States* (22 How., 443) that such a recital was not sufficient ground for the presumption that such prerequisites had been observed. The fact that there is a similar indorsement on the *expediente*, made though it be over the *rubrica* of Ramon Romero's "esteemed friend," Mendoza, to the effect that final title was issued May 15, 1825, does not add to the probability of the truth of this first recital, since it appears from the paper of January 16, 1831, introduced on the trial (R., 532), and also signed by Mendoza, that as late as that year the *título* had not issued but still awaited the payment of certain fees by the grantees. Further, that recital is at best but secondary evidence, the best evidence undoubtedly being Book No. 2 itself. It is shown by the testimony that there are two books of *toma de razon* in the Hermosillo archives—No. 1, and a second unnumbered. The first contains entries for 1824 and 1825, and the other entries from 1831 to 1849. The last entry in Book No. 1 is May 13, 1825, two days before the date of the *título* presented, and is followed by a number of blank leaves. There is no entry of this grant in that book, although there is much blank space following the entry of May 13, 1825, that would

be suitable and appropriate for such entries. There is no entry of this title in the other book. If the latter be Book No. 2, its contents affirmatively show that there is no *toma de razon* of this grant where the indorsement says there is. No proof is offered of the loss of any book of *toma de razon*. So that even if the unauthenticated indorsement on the *titulo* prove that a *toma de razon* was made in such a book, the case still lacks the proof of loss necessary to bring it within the rule laid down in the *Peralta case* (3 Wall., 434), where it is said:

> If the claimant can show to the satisfaction of the court *that the grant was made in conformity to law and recorded, and that the record of it has been lost or destroyed*, he will be permitted to introduce secondary evidence of it. But the absence of record evidence is necessarily fatal, unless that absence can be accounted for.

64. This grant is further barred from confirmation, so far as the *demasias* are concerned, by the absence of any provision in the treaty permitting the performance of conditions unperformed at the date of the treaty. Under the view of the matter of *demasias* taken by the Government, the payment of the purchase money therefor and the proceedings leading up thereto were all conditions precedent, without the performance of which no title vested and no interest accrued. On the other hand, claimant's contention seems to be that all these proceedings, including payment of the purchase price, were conditions subsequent, and that the right to perform these conditions subsequent subsists at the

present time—forty-eight years after the signing of the treaty. It is believed that this proposition is foreclosed by the history surrounding the treaty of 1853. That treaty (article 5) adopts by reference the provisions of article eight and nine of the treaty of Guadalupe Hidalgo for the protection of property rights; which throws us back to the treaty of Guadalupe Hidalgo for a construction of the meaning of the word "property." That it does not mean such titles as rest for their completion upon the performance after the treaty of some condition is shown by the action of the Senate of the United States in striking out section *ten*, which specifically stipulated for a new period for the fulfillment of conditions after the treaty, where they had not been fulfilled prior to the treaty. This diplomatic incident is discussed fully in the case of *Interstate Land Company* v. *Maxwell Grant Company* (139 U. S., 588), where it is specifically held that as "that claim had never been perfected prior to the treaty of Guadalupe Hidalgo it was not protected by virtue of that treaty." The principles of law announced there are controlling here. If a party may now, by paying the price in force under the Mexican régime, make himself entitled to a *título*, why might not Beales, the star figure in the Maxwell case, have, after the treaty, brought in his colony and thus, by complying with the condition of his grant, have been in a position to demand title? Certainly, his introducing a colony was no more a consideration for his grant than the payment of the purchase money is a consideration for a grant of the

demasias under the Mexican system. If the equities are in favor of either party, there is much in favor of Beales. In this case the performance of the condition of introducing a colony became impossible by reason of the war between Texas and Mexico and the achievement of the independence of the former prior to the time within which such performance was required. Beales thus had a good excuse for the nonperformance of his conditions. The predecessors in interest of claimants, however, had none. According to contention of counsel, they had the right to pay this money at any time and receive a *título* for the *demasias*. They preferred, however, in the years spent by them under the Mexican sovereignty to withhold from the Government the purchase price, which they now admit was due it; to squat on the lands; to live upon the bounty of the public and presume upon its privileges; and now, sixty years later, to come into a court of equity to ask for a title. Certainly there is little equity to be found in their withholding a payment which the law says they should have made over a half century ago. To say, as counsel have urged, that these grantees did not know they were in possession of more than the amount granted is to make an unwarranted reflection on their sanity. The Zanja grantees knew from their *título* that they had at least 16 sitios, 2 leagues each way from the center, when they had paid for only 4 *sitios*. Can it be conceived possible that these people could believe the 40 *sitios* alleged to have been within their monu-

ments to be 4? Where is the man that does not know 1 from 10; 1 mile from 10; 1 acre from 10? And these pastoral people, accustomed to outdoor life, to traversing distances, to estimating measurements, knew better even than would we of the present day just what they held. If they were uncertain, it was not the duty of the Government to take the initiative, but their duty.

65. This was what was done by the parties in the Agua Prieta, the San Pedro, the Buena Vista, the Ainsa cases—in every Arizona grant that has come before this court lying partly in Mexico. The Government in no instance took the initiative; the claimants in every instance did. The only exception is the case at bar, in which the initiative was taken neither by the Government of Mexico nor by the claimants, but by Concepcion Elias, who secured as public domain all this grant lying in Mexico and promptly sold it to Ignacio Bonillas. Claimants' contention that they had a right supinely to wait until the Government instituted an inquest into the amount of property held by them and to pay the purchase price only when pursued to the earth by the agents of the nation armed with an execution is hardly in keeping with the uniform procedure above cited or with the spirit of the law of 1835 or the law of 1852, providing for the composition of lands and the raising of revenue thereby. If the grantees had such rights, based on condition, as claimants assert for them, they slept on those rights, and by the treaty they were forever foreclosed of the

right to perform such conditions, whatever their right to do may have been prior to September 25, 1853. In the words of the Maxwell case, above cited, such a claim or right "was not protected by virtue of that treaty," and was "one of the class which was expressly refused to be recognized by the treaty."

66. Among the limits upon the court's jurisdiction imposed by the act of 1891 is one to the effect that imperfect claims in respect to which no petition shall have been filed by March 3, 1893, "shall be deemed and taken, in all courts and elsewhere, to be abandoned, and shall be forever barred." That this claim, at least so far as it asks for a confirmation of *demasias*, is at best only an imperfect title, is in effect admitted by the contention that the payment of the purchase money now tendered is the performance of a condition subsequent. That it is equally an imperfect title so far as it relates to the unsegregated, unlocated *cabida legal* of four *sitios* is shown by the following definitions of a "perfect title:" Thus, in *Steinbach* v. *Moore* (30 Cal., 508–509) it is said:

> A title derived from the same [the Mexican Government] was not perfect while *any further act* was required on the part of the Government, or that of the United States as its successor, in order to invest the claimant with the entire legal title to and the absolute possession of the specific lands granted.

So in *Paschal* v. *Perez* (7 Tex., 348), *Hancock* v. *McKenney* (7 Tex., 384), and *Stevenson* v. *Burnett* (35 Cal., 432) a perfect title is held to be "one which

does not require a further exercise of the granting power to pass the fee in the lands; it is a title which conveys full and absolute dominion, not only as against all private persons, but as against the government, and which may consequently not be disavowed by the political or granting power, and stands in no need of reaffirmance from such a power."

67. The status of this claim at the date of the treaty when measured by the definitions of a perfect title just given will be readily seen to be far from a perfect title, both as to *cabida legal* and *demasias*. No one can for a moment contend that under the Mexican system in force in 1853 the claimants of this grant were possessed of the legal title to and "the *absolute possession of*" *the demasias* or that they held "full and absolute dominion of the *demasias* not only against private parties, but against the Government," or that their title to the *demasias* needed "no reaffirmance from such power." Nor as to the 4 *sitios* paid for, unsegregated as they were at the date of the treaty from "the entirety" of the total area of 16 *sitios*, as shown by the measurements, or 25 or 40 *sitios*, as shown by the monuments, and unlocated as they were in a tract ten times as large, a tract containing several times over the quantity and quality paid for, can it be said that they constituted a perfect claim or a perfect title. To what 4 *sitios* did the grant confer "the entire legal title," and to what "specific lands granted" did it confer "absolute possession?" To what 4 *sitios* of the 40 did it pass "full and absolute dominion" against all private persons and

against the Government? What 4 *sitios* did it convey with such effect as to have no need of reaffirmance from the Government? It is entirely evident that as to both *demasias* and *cabida legal* the title held at the date of the treaty was at best inchoate and incomplete.

68. If this claim be an imperfect one and if the petition under which its confirmation is invoked was filed after March 3, 1893, the confirmation is barred by the provisions of section 12 of the act of March 3, 1891, above quoted. That the Cameron petition was filed after March 3, 1893, is shown by the record in this case. Although the Green petition was presented to the court prior to March 3, 1893, there was no appearance for him at the trial, and it was made to appear affirmatively from the evidence that Green had at the date of the filing of his petition no interest in the premises and no right to invoke the jurisdiction of the court. The case thus reverts on the pleadings filed by Cameron and Christie. There was no appearance by Cameron until 1895, when he filed an answer denying Green's right to bring the suit and disclaiming so far as he was concerned any desire to secure relief from this court. Christie did not appear until 1899. It was not until 1899 that Cameron came before this court asking affirmative relief and thus became in effect a plaintiff. His rights must be tested as of the date of the filing of his petition. This latter was filed six years after the date fixed by law for the presentation of imperfect claims, and his suit must be held to be

too late, and his claim "to be abandoned and forever barred."

United States v. *Patterson*, 15 How., 11;
McMicken's case, 97 U. S., 208.

69. If the Government's contention that this grant is imperfect be sustained by this court and all its other positions overruled, the confirmation must still be confined to 11 *sitios* under the limitation of imperfect titles imposed by subsection 7 of section 13 of the law of 1891.

70. Even if the claim to the *demasias* were property protected by the treaty—which we have attempted to show it is not—it is still not such a property claim as is cognizable by the Court of Private Land Claims, under the act of March 3, 1891. The terms of the latter act are, of course, the limit of the court's power to recognize the rights protected by the treaty. Substantial equities in property may in some instances exist within the terms of the treaty and yet that court be under the act of its creation entirely without jurisdiction to recognize or confirm them. That class of cases Congress has necessarily reserved for its own determination or for assignment to a judicial tribunal under future legislation. Some instances where at least equitable rights are acknowledged, but the power of this court to afford relief is denied, are afforded by the following cases:

Santa Fe case, 165 U. S., 675;
United States v. *Sandoval*, 167 U. S., 290;
Zia v. *United States*, 168 U. S., 198.

71. The confirmation of the *demasias* is also precluded by subsection 8 of section 13, which provides that "no concession, grant, or other authority to acquire land made upon any *condition* or *requirement*, either antecedent or subsequent shall be admitted or confirmed unless every such condition or requirement was performed within the time and manner stated in such concession, grant, or other authority to acquire land."

Viewed in its most favorable light this payment of the purchase price for the *demasias* is a requirement subsequent. It had confessedly not been performed at the date of the treaty, although claimants had had twenty or more years at that time to perform it. This claim must be passed upon by the court as of the date of the treaty, the rights of property protected being those in existence then. This is thus a claim whose *status* became fixed in 1853, when the treaty was concluded; that *status* included the nonperformance at that date of a necessary condition, and claims in which there is a nonperformance of condition or requirement are excepted from the jurisdiction of the court. (*Cessna v. United States*, 169 U. S., 188.)

72. The United States, by reason of its attribute of sovereignty, is not subject to suit save by its consent, and then only to the extent it has consented. The fact that the act of 1891 provides no machinery by which conditions unperformed in 1853 can be performed now is proof that the jurisdiction it confers was not intended to include cases of that character. If the

Court of Private Land Claims is authorized to accept money where payment was a condition, why might it not accept the organization of a colony where such was a consideration for the grant and a condition comprehended by it, but not yet complied with? Why might it not accept the establishment of a merino sheep farm, which constituted the unfulfilled condition, fatal to the José Sutton claim, case No. 143 on its dockets? Why might it not allow the digging of a well, which was the nonperformed condition in the *Vigil case* (13 Wall., 449)? If one of these conditions is to be allowed performance, why not all? And if all, who are to see that the colony is properly introduced, that the well is dug the requisite depth, that the merino sheep are of the necessary size and fatness? Is it the court, the clerk, or the counsel for the Government? Surely there is nothing within the act that imposes these several and onerous duties upon either of the officers provided by the act of 1891, and no one would for a moment contend that there was any such duty resting upon them or either of them or that the performance of any such duty would bind the United States without a statute specifically constituting such officer an agent of the Government for that purpose. Not less absurd in principle than the supervision by the court of the digging of a well or the establishment of a merino sheep farm is the suggestion that the court is authorized to preside at a sale of land, at the acceptance of purchase money in consideration of one of its judgments decreeing a confirmation. Is the court to

pass upon the question of whether the *demasias* sought to be purchased are excessive? This is required by the law of 1835. Is it to determine whether the denouncers have the means to stock the *demasias?* That is required by the law of 1852. Is it to conduct "the public auction" where, as in this case, the *demasias* are excessive? That is the only method of their acquisition under the law of 1852. Where is the law that authorizes the court thus to barter the public lands, to make its decrees contingent on the payment of purchase money, to conduct a land-office business? Where is the law that authorizes its clerk to receive such money on behalf of the United States? Where is any law providing for the payment of such money into the Treasury or authorizing its receipt by the Treasury? What agent at the National Treasury is authorized to take such a sum for such a purpose? Certainly, had this character of procedure been in the contemplation of Congress in framing the act of 1891, it would have made it evident. Whatever may be the powers of courts of general equity jurisdiction with regard to tenders and the acceptance of tenders, such principles can have no application to a court of statutory jurisdiction only, especially where one of the parties is the sovereign who submits himself to litigation with the subject only upon certain prescribed terms and within certain well-defined limits. The act of 1891 is as expressive in what it does not say as it is in what it says.

73. This character of claim is precluded from confirmation by subsection *one* of section 13 of the act

of 1891. The *demasias* were certainly not held by perfect title. They did not constitute such a claim as claimants would have had a lawful right to make perfect. As we have seen above, the law of Sonora of 1835 was not in force in 1853, having been superseded by the law of May 14, 1852. But even were the rights conferred by the Sonora law of 1835 in force in 1853, it was not a right to demand title, but a right to secure it upon performance of a financial condition and upon satisfying the proper officers that the *demasias* asked for were not excessive. There was intervening between the status of the claimants in 1853 and the possession of the title in 1853, if we consider the law of 1835 as then in force, two obstacles—one the payment of the money, the other the proof to the satisfaction of an officer vested with ample discretionary powers that the *demasias* were not excessive. Can it be said that under such conditions the grantee had at the date of the treaty a right, "an absolute right" (*Santa Fe case*, 165 U. S., 67), to demand title? If not, his claim is not within the provisions of the act of 1891.

74. And under the law of 1852 was his standing any better? Under that law he could secure no *demasias* however small without paying for them, and he could not secure even these without proof of his ability to stock them. If the *demasias* were more than a third of the legal area, he could get them only at public auction. Can it be for a moment contended that he had "an absolute right" to demand title to the *demasias* when his obtaining them at all was dependent, *first*, upon his

proofs as to ability to stock, and, *second*, upon the outcome of a public auction? Perhaps in the last he might have been outbidden, just as Bustillo was by Romero in 1821 in this case. Perhaps the price which would ultimately have resulted from this auction would have greatly exceeded the paltry sum which claimants so studiously tender in this cause. Indeed, the fact that the United States paid something like 34 cents an acre for the land which claimants in a spirit of inexplicable generosity now offer to pay less than 1 cent an acre for indicates that had the San Rafael grantees participated in an auction in 1853, as permitted by the law of 1852, they would have had to pay much more than their successors in title now seek to contribute to the public treasury; or, outbidden in the contest, those same successors in title might not now be before this court as the claimants of a princely domain for which neither the Mexican nor the American Government has ever received a cent.

75. This is not the character of claim that "the United States are bound upon the principles of public law or by the provisions of the treaty of cession to respect and permit to become complete and perfect if the same was not at said date already complete and perfect." (Subsection 1 of section 13 of the act of 1891.) That the United States is under no obligation, as a matter of public law, to recognize a grant as valid whose conditions remained unfulfilled at the date of the treaty is evident. It would be announcing a principle entirely unknown to international law to hold that

the grantee nation is bound to allow conditions unfulfilled at the date of cession to be fulfilled thereafter. While the Florida treaty contained a stipulation allowing a certain time after cession for the performance of conditions attached to grants (*Sibbald case*, 10 Pet., 321), this was a mere matter of contract. Had there been no such stipulation, under the rules of the international law there would have been no such right. This principle is recognized by this court in the *Cessna case* (169 U. S., 186) in discussing this very section of the act of 1891, when, after referring to the action of the commissioners on the treaty of Guadalupe Hidalgo in striking out article 10, it says:

> By the rejection of this article this Government distinctly declared that it did not propose to recognize any grants which were not at the time of the treaty of cession recognized by the Mexican Government as valid, or any whose conditions, either precedent or subsequent, had not been fully performed.

And thereupon adds:

> In this respect the action taken was in harmony *with the general rule of international law.*

If the United States is not bound upon principles of public law to respect such a claim, even less so is it by the provisions of the Gadsden treaty. This last subject has already been discussed, and upon it the Cessna case, just quoted, is very much in point.

76. No better conclusion can be found for this sub-

ject than the following quotation from the Ely case, at page 239:

> This Government promised to inviolably respect the property of Mexicans. That means the property as it then was, and does not imply any addition to it. The cession did not increase rights. That which was beyond challenge before remained so after. That which was subject to challenge before did not become a vested right after. No duty rests on this Government to recognize the validity of a grant to any area of greater extent than was recognized by the Government of Mexico. If that government had a right, as we have seen in *Ainsa* v. *United States* it had, to compel payment for an overplus or resell such overplus to a third party, then this Government is *under no moral or legal obligation* to consider such overplus as granted, but may justly and equitably treat the grant as limited to the area purchased and paid for.

It is, accordingly, respectfully urged that under the authorities cited there can be no confirmation entered in this cause; none for the *demasias*, for the reason that this court has so held in at least four cases and because those decisions are right upon principle and upon authority; none for the quantity named in the titles, for the reason that claimants' petition was not filed in time, for the reason that a confirmation is barred by the limitations of the Gadsden treaty, and for the reason that the proceedings in this cause are void for lack of authority in the granting officer.

The claim should be rejected and the petition and crosspetition dismissed.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

APPENDIX 1.

TRANSLATION OF EXPEDIENTE.

[Seal of the Treasury-General of the State of Sonora, Republic of Mexico. Year 1894.]

TESTIMONIO OF THE RANCHO CALLED "SAN RAFAEL DE LA ZANJA."

[A stamp of 50 cents. March 5, 1894.]

To the Treasurer-General of the State of Sonora:

I, Rochester Ford, a resident of Tucson, Territory of Arizona, representing Mr. Colin Cameron, respectfully beg leave to state that Mr. Colin Cameron, being the owner of the rancho "San Rafael de la Zanja," and not having the expediente of said rancho, and being under the necessity of possessing a copy of said expediente for his use and protection, I request that you send me a copy of said expediente, duly certified, for such uses as Mr. Colin Cameron may see fit to make thereof. I certify to act in good faith, etc.

ROCHESTER FORD.

Tucson, Arizona, March 5, 1894.

Government stamp in force for the two years 1820 and 1821. A seal which reads Carlos IV Hispaniarum Rex. D. G. A seal which reads Fernando VII. D. G. M. Years D. 1814, 1815. S. 3. Two reales. Another seal which reads Fernando VII. D. G. M. Years D. 1816, 1817. S. 3. Two reales. Another seal which reads Fernando VII. D. G. N. Years D. 1818, 1819.

S. 3. Two reales. Third seal, two reales, years eighteen hundred and ten and eighteen hundred and eleven. *To the governor intendente:*

I, Don Manuel Bustillo, a resident of the presidio of Santa Cruz, before your honor, with the proper respect and in due form of law, appear and say that having a considerable amount of stock and needing a tract of land suitable for their preservation, I denounce and ask leave to purchase at auction 3 sitios of land in the same presidio in which I reside and outside of the boundaries thereof, on the side of the north, and 1 sitio more for an "estancia" (stock ranch), in the place of the cajoncito, on the side of the east. Wherefore, I pray your honor that for the measurement of the said tract of land you be pleased to issue the necessary orders to the proper officers, and that the commissioner may take into consideration in its valuation that the tract of land asked for borders upon the country of the Apaches, who are constantly hostile.

I, therefore, pray your honor to be pleased to grant my petition, in which I shall receive favor and justice, swearing that I do not act in bad faith, and to whatever is necessary.

MANUEL BUSTILLO.

To the governor intendente.

ARIZPE, *July 19, 1821.*

The foregoing petition is presented and admitted without prejudice to the parties who may have a better right.

The commandant of the company of Santa Cruz will proceed to the measurement of the lands hereby registered, summoning the adjoining landowners, and appointing expert appraisers, who shall value the same impartially; publication to be made for thirty days, for

the purpose of soliciting bidders; and when all the necessary proceedings shall have been taken in the premises, the expediente shall be transmitted to this "juzgado privativo," for the necessary proceedings, in order that the corresponding title may issue thereon.

CORDERO.

ACT OF ACCEPTANCE.

SANTA CRUZ, *October 4, 1821.*

Don Manuel Bustillo, of this vicinity, having presented the foregoing decree, issued on the 19th of July, ultimo, by the señor governor intendente, Brigadier Don Antonio Cordero, I said that I accepted, as I at once did accept, the commission contained in the foregoing decree, whereupon I ordered that the party interested and the neighboring landowners be summoned, and accompanied by the necessary officers, who are named, I appoint to-morrow as the day for the commencement of the measurements of the four sitios for raising cattle in the place called La Zanja, as before stated. By this decree, which shall be made known to the parties interested, I, the commissioner, Don Simon Elias Gonzales, captain of the company of the presidio, thus provided, ordered, and signed with the assisting witnesses, as required by law, in the absence of a notary.

SIMON ELIAS GONZALES.

Asst. LORENZO SORTILLON.

Asst. RAMON ROMERO.

NOTIFICATION TO THE INTERESTED PARTIES.

On the same day, of the same month and year, I, the said commissioner, there being present Mr. Manuel Bustillo, as the interested party, and José Garcia

Manso, solicitor of the common property of the residents of this place, notified them and communicated to them the foregoing decree, which they understand, and they declared that they considered themselves summoned, the first as being a party concerned and the second because the lands solicited adjoined the ejidos (common lands) of this presidio. They signed with me and the usual witnesses in the usual form.

SIMON ELIAS GONZALES.
MANUEL BUSTILLO.
[RUBRICAS.]

Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

At the presidio of Santa Cruz, on the said fourth day of October, eighteen hundred and twenty-one, I, the said commissioner, in order to proceed to the measurement of the said land and to the appointment of officers, did appoint José Antonio Calvo as counter, Tomas Guana as notor, Felipe Jaramillo and Leandro Romero as measurers, all of this place, and they being present accepted the said appointments, and each one made oath separately, using the form by God, our Lord, and making the sign of the cross, well and faithfully to perform their duties, without any deception, fraud, or imposition, according to the best of their knowledge and understanding, and they signed with me and the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES.
ANTONIO CALVO.
TOMAS GUANA. [RUBRICAS.]

Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

APPOINTMENT OF OFFICERS; THEIR ACCEPTANCE AND OATH.

View and examination of the land. At the place de la Zanja on the fifth day of the month of October, one thousand eight hundred and twenty-one, I, the said commissioner, having repaired to the said place with the appointed officers and usual witnesses, ordered that first of all an inspection and examination of the land should take place by examining it in detail in all directions (meaning from south to north and east to west), and after a careful examination I found it to be a waste country wherein the valley was devoid of trees, with low places and table-lands completely dry, there being no running water upon them for irrigation. All of which I hereby certify with the usual witnesses in the usual manner in the absence of a notary.

SIMON ELIAS GONZALES.

Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

BEGINNING OF SURVEY.

On the said day, month, and year, I, the said commissioner for the purpose of commencing the survey of the four sitios for raising cattle denounced by Don Manuel Bustillo, of this vicinity, delivered a hempen cord, well twisted and stretched, to the officers appointed, and also a Castillian vara, on which cord there were measured and counted in my presence fifty usual varas, and this operation being concluded, a stake was attached to each end of said cord; and being at the central point as fixed by the denouncer, which point is named San Rafael, the petitioner asked that, since the place of Los Cajoncitos which is petitioned for has been recognized as being within the common lands of

the presidio (of Santa Cruz), it should be added to the three sitios for which he had petitioned, which request appeared just; whereupon the measurement was commenced, the line being run towards the north, in which direction were measured two hundred cords, which terminated on a mesa on the bank of an arroyo which runs towards the peñasco, at the foot of an oak tree, upon which was made a cross, and at the trunk of which a large pile of stones was placed as a sign for a monument. Returning to the center, there were measured two hundred cords towards the south, which terminated at the mouth of the Cañada of the Potrero, at the same point at which is found the monument of the common lands of this presidio on the side of the north. Returning to the center, there were measured and counted towards the east two hundred cords, which terminated beyond the said Cañada of the Potrero on a contiguous mesa, where a large pile of stones was placed as a sign for a monument, and returning to the center there were measured and counted towards the west one hundred and thirty-three cords for the reason that the sixty-seven cords required to make the two hundred cords could not be measured on account of the roughness of the tract of land; these were therefore estimated, the estimated lines terminating on a high mountain situated in the range of the Sierra de la Plomosa, almost southwest of the small hill called "El Caloso," the summit of which was taken to designate a monument. Whereupon, it being late in the day, the proceedings were suspended, to be resumed to-morrow. In witness whereof I make this entry in the proceedings, which are signed by me, the assisting witnesses, the officers

appointed who knew how to write, together with the interested party in the ordinary manner.

SIMON ELIAS GONZALES.
ANTONIO CALVO.
MANUEL BUSTILLO. [RÚBRICAS.]

Asst. LORENZO SORTILLON.
Asst. RAMON ROMERO.

CONTINUATION OF THE SURVEY.

At the said place of San Rafael, on the 6th day of the said month and year, I, said commissioner, together with the officers appointed, in order to make the corresponding cords of the lands measured on yesterday, went to the place at which the two hundred cords terminated on the north, from which monument we estimated, on account of the roughness of the tract of land, two hundred cords towards the east, which terminated above a spring known as "El Carricillo," at the point of the Sierra del Cobre (copper mountain), at which point a corner monument is to be placed. In the same manner two hundred cords were estimated, on account of the roughness of the tract of land, towards the west, to the foot of a red hill (cerro), which was designated as a landmark, which hill is seen through an open place between the Peñasco and the mountains (cerros) of Sonoita; from this point four hundred cords were estimated, towards the south, upon the Sierra de la Plomosa to a point beyond the pass of San Antonio, where there are two small mountains which designate the corner on the side of the west of the common lands of this presidio, and which point is to serve as a corner monument of these sitios; from this point there were measured and counted two hundred cords towards the east, the line terminating at

the monument on the northerly boundary of the said common lands (of the presidio) which is found at the mouth of the Cañada of the Potrero, from which point, continuing the square, there were measured two hundred cords toward the east, which terminated on the Jaralito, at the corner monument of the said lands of the presidio, from which point four hundred cords were estimated toward the north on account of the roughness of the tract of land which ended above the spring, El Carricillo, with which measurements was formed the square of the four sitios registered by Don Manuel Bustillo for raising cattle, and as such he accepted them; being informed that in due time he was to establish his boundaries with monuments of lime and rough stone as required by law; signing with me, the officers appointed who knew how to write, and the assisting witnesses in the ordinary form.

Simon Elias Gonzales.
Manuel Bustillo.
Asst. Lorenzo Sortillon.
Asst. Ramon Romero.

VALUATION AND APPRAISEMENT OF THE LAND.

Thereupon I, the said commissioner, in order to proceed to the appraisement of the lands surveyed by me in favor of Don Manuel Bustillo, situated at San Rafael de la Zanja, containing four sitios for raising cattle, said that I appointed, and I did appoint, as such appraisers Don Alejo Bedolla and Tomas Guana, which latter acted as notor in the survey, they having fully seen and examined the said tract of land in detail, and they being present I communicated to them the said appointment, which they accepted, and they made oath in due form by God our Lord, making the sign

of the cross, well and faithfully to perform their duties without any deception, fraud or imposition, and under said oath they unanimously declared that after the examination which they had made of the said land they find and appraise according to their consciences that three of the said sitios, which have permanent water, are worth sixty dollars each, and the fourth, which may be made of use by means of a well, is worth thirty dollars, according to their true knowledge and understanding, as they have sworn to appraise; and after I had read to them this document they affirmed and ratified its contents and Guana signed it with me in the absence of a notary, in the usual manner.

SIMON ELIAS GONZALES.
TOMAS GUANA.

[RUBRICAS.]

Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

DECREE ODRERING THE AUCTIONS TO BE PROCEEDED WITH.

At the presidio of Santa Cruz, on the tenth day of October, one thousand eight hundred and twenty-one, I, the said commissioner, in view of the foregoing proceedings of survey and appraisement of the lands of San Rafael de la Zanja, consisting of four sitios for raising cattle, said that they shall be put up at auction for thirty consecutive days in accordance with the laws established by higher authorities, admitting to said sales the bids and additional bids that may be made; and by these presents I thus decreed, ordered, and signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

FIRST AUCTION.

At the presidio of Santa Cruz, on the said day, in the said month and year, I, said commissioner, at the sound of the drum caused many individuals of this place to be assembled upon the public plaza, and ordered that, in presence of all the bystanders, Juan Antonio Rodriguez, who fills the office of public crier, should announce in a loud voice "the lands of the place called San Rafael de la Zanja, situate within this jurisdiction and containing four sitios for raising cattle, surveyed in favor of Don Manuel Bustillo of this town, appraised at two hundred and ten dollars, are for sale, on account of the public treasury; whoever wishes to make a bid, let him come and do so in due form before me, when his bid will be received;" and there being no bidder, I make this certificate of the fact and signed it with my usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

SECOND AUCTION.

At the same presidio, on the eleventh day of the said month and year, another like auction was held and with the same formalities as the former, and no bidders having appeared, I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

THIRD AUCTION.

At the said presidio, on the twelfth day of said month and year, another auction was held, like the

former, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

FOURTH AUCTION.

At the said presidio, on the thirteenth day of the said month and year, another auction was held like the former, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

FIFTH AUCTION.

At the same presidio, on the fourteenth day of the said month and year, another auction was held like the former ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

SIXTH AUCTION.

At the said presidio, on the fifteenth day of the said month and year, another auction was held like the former ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses, in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

SEVENTH AUCTION.

At the same presidio, on the sixteenth day of the said month and year, another auction was held like the former ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses, in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

EIGHTH AUCTION.

At the said presidio, on the seventeenth day of the said month and year, another auction was held like the former ones, and no bidder having appeared I made this certificate, which I signed in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

NINTH AUCTION.

At the said presidio, on the eighteenth day of the said month and year, another auction was held in the same form as the former ones, and no bidders having appeared I made this certificate, which I sign with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

TENTH AUCTION.

At the said presidio, on the nineteenth day of the said month and year, another auction was held like the preceding ones, and no bidder having appeared I made

this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

ELEVENTH AUCTION.

At the said presidio, on the twentieth day of the said month and year, another auction was held in the same form as the preceding ones, and no bid being made I made this certificate, which I signed with my usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWELFTH AUCTION.

At the said presidio, on the twenty-first day of the said month and year, another auction was held like the preceding ones, and no bidder having appeared I made this certificate, which I signed with my usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

THIRTEENTH AUCTION.

At the said presidio, on the twenty-second day of the said month and year, another auction was held in the same form as the preceding ones, and no one having offered a bid I made this certificate, which I signed with my usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

FOURTEENTH AUCTION.

At the said presidio, on the twenty-third day of the said month and year, another auction was held with the same formalities as the preceding ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

FIFTEENTH AUCTION.

At the said presidio, on the twenty-fourth day of the same month and year, another auction was held with the same formalities as the preceding ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LOZENZO SORTILLON.
Witness: RAMON ROMERO.

SIXTEENTH AUCTION.

At the said presidio, on the twenty-fifth day of the said month and year, another auction was held like the preceding ones, and no bid having been offered I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]
Witness: LORENZO SORTILLON.
Witness: RAMON ROMERO.

SEVENTEENTH AUCTION.

At the said presidio, on the twenty-sixth day of the said month and year, another auction was held like the

preceding ones, and there being no bid offered I made this certificate, which I signed with my usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

EIGHTEENTH AUCTION.

At the said presidio, on the twenty-seventh day of said month and year, another auction was held in the manner as the former ones, and no bid having been offered, I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

NINETEENTH AUCTION.

At the same presidio, on the twenty-eighth day of the said month and year, another auction was held like the former ones, and no bid having been offered, I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTIETH AUCTION.

At the said presidio, on the twenty-ninth day of the said month and year, another auction was held in the same manner as the preceding ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

October 29, 1821. Being obliged to report at the capital of Arizpe by order of my superiors in matters of public service, this expediente shall be delivered in its present state to the commandant pro tem., ensign José Pesqueira, in order that he may proceed to hold the remaining ten auctions; that upon their conclusion he shall proceed to receive the testimony as to the ability of the interested party, and forward the same to the intendencia of the province with a summons to the party concerned. In witness whereof I have signed this in the said month and year with the usual witnesses according to law.

SIMON ELIAS GONZALES. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-FIRST AUCTION.

At the said presidio, on the thirtieth day of the said month and year, another auction was held in the same manner as the preceding ones, and there was no bidder; wherefore I made this certificate in accordance with the charge entrusted to me for this purpose, as appears from the foregoing documents, and I signed it with the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-SECOND AUCTION.

At the said presidio, on the thirty-first day of the said month and year, another auction was held in the same form as the preceding ones, and no bidder hav-

ing appeared, I made this certificate, which I signed with the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-THIRD AUCTION.

At the said presidio, on the first of November of the said year, another auction was held, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-FOURTH AUCTION.

At the said presidio, on the second day of said month and year, another auction was held in the same form as the preceding ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-FIFTH AUCTION.

At the same presidio, on the third day of the said month and year, another auction was held in the same form as the preceding ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

JOSÉ PESQUEIRIA. [RUBRICAS.]

WITNESS: RAMON ROMERO.

WITNESS: LORENZO SORTILLON.

TWENTY-SIXTH AUCTION.

At the said presidio, on the fifth day of the said month and year, another auction was held in the same form as the preceding ones, and no bidder having appeared I made this certificate, which I signed with my usual witnesses in the ordinary form.

JOSÉ PESQUEIRIA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-SEVENTH AUCTION.

At the said presidio, on the fifth day of the said month and year, another auction was held in the same form as the preceding ones, and no bidder having appeared I made this certificate, which I signed with my usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICA].

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-EIGHTH AUCTION.

At the said presidio, on the sixth day of the said month and year, another auction was held like the preceding ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TWENTY-NINTH AUCTION.

At the same presidio, on the *sixth* day of the said month and year, another auction was held in the same form as the preceding ones, and no bidder having

appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

José Pesqueira. [rubricas.]

Witness: Lorenzo Sortillon.

Witness: Ramon Romero.

THIRTIETH AUCTION.

At said presidio, on the eighth day of said month and year, another auction was held like the former ones, and no bidder having appeared I made this certificate, which I signed with the usual witnesses in the ordinary form.

José Pesqueira. [rubricas.]

Witness: Lorenzo Sortillon.

Witness: Ramon Romero.

ORDER FOR INTERESTED PARTY TO FURNISH PROOF OF HIS ABILITY TO STOCK THE LANDS.

At the presidio of Santa Cruz, on the ninth day of said month and year, I, the said commissioner, in view of the fact that the measurements, appraisement, and offers of sale were concluded, and that only the proof of the interested party's ability to stock the land was lacking, such proof to be furnished by three witnesses, as provided by law, ordered that said party be notified to produce said witnesses in order to proceed to hear said testimony. In witness whereof I make this certificate, which I signed with the usual witnesses in the ordinary form.

José Pesqueira. [rubricas.]

Witness: Lorenzo Sortillón.

Witness: Ramón Romero.

NOTIFICATION.

Immediately thereupon, Don Manuel Bustillo being present, I communicated to him the foregoing order, and in consequence thereof he presented the witnesses he is asked to produce, and he signed this with me and the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: LORENZO SORTILLON.

Witness: RAMON ROMERO.

TESTIMONY OF FIRST WITNESS.

At the presidio of Santa Cruz, on the ninth day of said month and year, I, the said commissioner, in order to comply with the foregoing order, and Don Manuel Bustillo having presented as a witness the sergeant of this company, Dolores Jacome, caused the latter to make oath, which oath he took by God our Lord, and making the sign of the cross, by virtue of which oath he promised to tell the truth about what he might know that would be asked him; and being asked if the said Don Manuel Bustillo has the ability to stock the place San Rafael de la Zanja which he has registered for raising cattle, he (the witness) said that he knows and states that he (Bustillo) has at the present time a considerable number of cattle and horses with which to stock the said land; that this is all he knows and can tell about this matter; that it is true, under the oath he has taken, and when this declaration was read to him he affirmed it and ratified it. He stated that he is forty-five years of age and a competent witness, and signed with me and the usual witnesses in the absence of a notary in due form of law.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: YGNACIO PRAGEDIS CARRILLO.

Witness: RAMON ROMERO.

TESTIMONY OF SECOND WITNESS.

At the said presidio, on the said day of the said month and year, I, the said commissioner, caused the oath to be administered in due form to Ygnacio Medina, the second witness presented by Don Manuel Bustillo, who promised to tell the truth about what he might know that would be asked him; and being asked if the said Bustillo has the ability to stock the place San Rafael de la Zanja, which he has registered for raising cattle, he said that he knows and states that he (Bustillo) has placed upon said land a considerable number of cattle and horses with which said land is stocked; that this is all he knows in the matter; that it is the truth under the oath he has taken; and when this declaration was read to him he affirmed and ratified it. He stated that he was forty years of age, and signed with me and the usual witnesses with whom I act in the absence of a notary, according to law.

José Pesqueira.

Ygnacio Medina. [rubricas.]

Witness: Ygnacio Pragedis Carrillo.

Witness: Lorenzo Sortillón.

TESTIMONY OF THIRD WITNESS.

At the said presidio, on the said day of the said month and year, Don Manuel Bustillo, having presented the third witness, José Antonio García, an invalid of this company, I, the said commissioner, caused the latter to take the oath by God our Lord and the sign of the cross, under which oath he promised to tell the truth about what he knew so far as he might be asked, and being asked if the said Bustillo has the ability wherewith to stock the place San Rafael de la Zanja, which he has registered for raising cattle, he

said that he states that he (Bustillo) has placed upon the said land a considerable number of cattle and horses with which he has stocked it; that this is all he can tell and all he knows about the matter, and that it is the truth under the oath which he has taken; and when this declaration was read to him he affirmed and ratified it. He stated that he was fifty-four years of age and a competent witness, and as he did not know how to write, I signed for him with the usual witnesses as provided.

José Pesqueira. [rubricas.]

Witness: Ygno. Pragedis Carrillo.

Witness: Lorenzo Sortillon.

WRIT SHOWING THAT THIS EXPEDIENTE IS CONCLUDED, AND TRANSMITTED TO THE GOVERNMENT WITH SUMMONS TO THE INTERESTED PARTY.

At the presidio of Santa Cruz, on the twelfth day of the said month and year, I, the said commissioner, had to order, and did order, that this expediente, being now concluded, be forwarded to the intendente of the province, and that the interested party be summoned to appear in the capital of Arizpe and be present at the last three auctions and final sale of the said lands, which has to take place before the commission established in that capital. In witness whereof I signed this with the usual witnesses in the ordinary form.

José Pesqueira. [rubricas.]

Witness: Ygno. Carrillo.

Witness: Lorenzo Sortillon.

NOTIFICATION.

At the said presidio, on the same day of the same month and year, I, the said commissioner, Don Manuel Bustillo being present, notified him of and

communicated to him the foregoing order, and he declared himself summoned to the final sale which is to take place at the capital of Arizpe, and signed with me and the usual witnesses in the ordinary form.

JOSÉ PESQUEIRA. [RUBRICAS.]

Witness: YGNACIO CARRILLO.

Witness: LORENZO SORTILLON.

MEMORANDUM.

On the fourth day of December, one thousand eight hundred and twenty-one, a report of this expediente, made upon twelve sheets of legal paper, was forwarded to the intendente of the province, to which I hereby certify. (Rubrica.) I transmit to your honor the expediente of lands registered in this presidio by Don Manuel Bustillo, having summoned the interested party to their final auction, to which you refer in your favor of the 17th instant, which I hereby answer. May God protect you many years. Santa Cruz, November 30, 1821. To the intendente pro tem., Don Ygnacio de Bustamante.

JUAN ALEJO CARRILLO.

Arizpe, December 11, 1821. To the Promotor Fiscal (Attorney-General).

BUSTAMANTE. [RUBRICA.]

Señor Intendente Interino:

The promotor fiscal (attorney-general) of this intendencia has carefully examined this expediente of lands surveyed in favor of Don Manuel Bustillo, a resident of the presidio of Santa Cruz, by the commissioner Don Simon Elias Gonzales, captain and commandant of said presidio, in the place named San Rafael de la Zanja in the same jurisdiction, from which there resulted

four sitios for raising cattle and horses, which were appraised by two experts appointed for that purpose at sixty dollars for three of them, because they contain running water, and the fourth at only thirty dollars, because it has need of water and can be benefitted only by a well, which two sums make two hundred and ten dollars, and having offered them at public auction for thirty consecutive days, no one offered more than the said appraisement. Whereupon the testimony of three witnesses was taken, which showed that the petitioner, Bustillo, possessed means to stock said tract of land. The promotor fiscal therefore asks you to cause the three public offers of sale to be made at public auction in this capital, inviting bidders and selling the tract of land at the highest possible price, the purchaser to be notified that he is to pay into this national treasury the total value of said lands, their half yearly tax, eighteen per cent express charges, two per cent general impost, and the three dollars for the officers of the abolished contaduria (auditor's office): the necessary certificate showing that these payments have been made to be issued and attached to the expediente, advising the superior junta of the same, that it may take such steps as may be deemed proper. This is my opinion, subject, however, to your determination.

Arizpe, December 20, 1821.

FRANCISCO PEREZ.

Arizpe, January 7, 1822. In accordance with the foregoing report of the promotor fiscal of this intendencia, the three public auctions, in the usual form, shall be proceeded with to accomplish the final sale mentioned in this expediente, the interested parties having first been summoned. The intendente pro tem.

thus decreed and ordered it, signing with the usual witnesses in the absence of a notary.

BUSTAMANTE. [RUBRICA.]

Witness: JOSÉ MARIA MENDOZA.

Witness: JOAQUIN ELIAS GONZALES.

[RUBRICAS.]

Immediately thereafter, Don Manuel Bustillo being present, the foregoing answer from the treasury and the order resulting therefrom were so communicated to him, and he acknowledged the communication and signed it with the intendente and the usual witnesses.

BUSTAMANTE.

MANUEL BUSTILLO. [RUBRICAS.]

Witness: JOSÉ MARIA MENDOZA.

Witness: JOAQUIN ELIAS GONZALES.

FIRST AUCTION.

At the city of Arizpe, on the eighth day of the month of January, one thousand eight hundred and twenty-two, there being assembled as a commission of auctions the intendente pro tem. as president, and the members who compose it, in order to hold the first of the auctions of which these proceedings speak, they caused to be assembled at the office of this intendencia at the sound of the drum many individuals, and ordered the public crier, Loreto Salcido, to proclaim in their presence in a loud and clear voice the following, which said crier did so proclaim, saying: "There are going to be sold for this commission of auctions four sitios of public lands for cattle raising, comprised in the place named San Rafael de la Zanja, situated within the jurisdiction of the presidio of Santa Cruz, surveyed in favor of the one who denounced them, Don Manuel Bustillo, and appraised in the sum of two hundred and

ten dollars, being at the rate of sixty dollars each for three of said sitios and the remaining one at thirty dollars. Whoever wishes to make a bid upon said public land, let him come forward and make his bid in due form before this commission, and every bid regularly made will be received, with the understanding that at the third and last auction, which is to be held the day after to-morrow, the final sale will be made to the highest bidder." At this time appeared Don Ramon Romero, who for himself and in the name of the inhabitants of the said military post of Santa Cruz, bid ten dollars above the appraised value, whereupon Don Manuel Bustillo immediately overbid the former. After that they went on bidding against each other alternately until the last bid ran up to one thousand two hundred dollars, made by Don Ramon Romero. Twelve o'clock of this day having now struck without a higher bidder having appeared, these proceedings were closed. In witness whereof the president and members of this commission of auctions signed.

BUSTAMENTE.
ESCALANTE.
FUENTES.
PEREZ.
[RUBRICAS.]

SECOND AUCTION.

At the same city, on the ninth day of the said month and year, was held the second auction of the lands spoken of in this expediente, in the same manner as the preceding one, with this difference only: That the public was notified that Don Ramon Romero, for himself and in the name of the residents of Santa Cruz, had made a bid of one thousand two hundred dollars. As no other

bidder appeared, this certificate was made and signed by the gentlemen composing the said commission.

BUSTAMANTE.
ESCALANTE.
FUENTES.
PEREZ. [RUBRICAS.]

THIRD AUCTION.

At the city of Arizpe, on the tenth day of the month of January, one thousand eight hundred and twenty-two, there being assembled as a commission of auctions the president and members composing the same in order to hold the last auction for the final sale spoken of, an offer of sale was made by Loreto Salcido, like in everything to the one of the preceding second auction, with this difference only, that the public was notified that this would be the last and final sale. Whereupon there appeared only the said Don Ramon Romero, repeating his bid of one thousand two hundred dollars for the said lands, and twelve o'clock of this day having struck without a higher bidder appearing, the crier said for the last time: "For the first time, for the second, for the third time: to be sold, to be sold, to be sold; going, going, gone, to Don Ramon Romero and the residents of the presidio of Santa Cruz." Thus this transaction was concluded, by which were solemnly sold the four sitios of public land which comprise the place named San Rafael de la Zanja, spoken of in these proceedings, in favor of the said Romero and residents of Santa Cruz, for the sum of one thousand two hundred dollars. In witness whereof this certificate was

made and signed by the interested party and the president and members of this commission of auctions.

BUSTAMANTE.
ESCALANTE.
FUENTES.
PEREZ.
RAMON ROMERO. [RUBRICAS.]

Arizpe, January 10, 1822, this expediente is to be forwarded, together with the attestation which contains the decisions of the higher officers in the matter, to Don Ramon Romero, in order that he may within three days proceed to take the necessary steps in the matter, giving the name of a suitable and experienced person in the City of Mexico who may be entrusted with bringing the matter before that court. The intendente pro tem. so ordered it and signed with the usual witnesses in the absence of a notary.

BUSTAMANTE. [RUBRICA.]
Witness: JOSÉ MA. MENDOZA.
Witness: JOAQUIN ELIAS GONZALES.
[RUBRICAS.]

Memorandum.—This day the expediente was delivered upon sixteen legal sheets in the terms provided.

To the intendente pro tem.:

Don Ramon Romero, for himself and for the residents of the presidio of Santa Cruz, appears before you, saying: I shall make prompt and true restitution of this expediente and of the attestation which has been delivered to me separately, and I proceed to state that, all these matters now being arranged in accordance with the decrees of the superior offices who rule in the premises, as embraced in said attestation, I am well satisfied with all the proceedings up to their actual state of sale;

and I therefore request that your honor will command the prompt progress of this expediente up to its final conclusion, in order that upon its approval by the superior junta of the treasury the corresponding title of sale and confirmation in our favor may be issued to the lands of San Rafael de la Zanja, of which these proceedings treat. We are ready to appoint in Mexico a suitable and experienced person to attend the matter in that capital city. Therefore, I request your honor to grant this my petition, in doing which you will confer a favor upon me and the parties whom I represent. I swear, &c.

RAMON ROMERO. [RUBRICA.]

DECREE.

In the city of Arizpe, on the 11th day of the month of January, 1822, the señor intendente *ad interim* of this province of Sonora and Sinaloa, Don Ygnacio de Bustamante, having examined the foregoing proceedings of suvey, appraisement, offers, auctions, and sale of the four sitios of royal lands for raising cattle, comprehended in the place called San Rafael de la Zanja, in the jurisdiction of the presidio of Santa Cruz, and sold to Don Ramon Romero and other citizens of that military post; in view also of Romero's written answer, and all other matters necessary to be considered, he declared that said proceedings were in all respects regular and sufficient, and considering that the said Don Ramon Romero and citizens of Santa Cruz are debtors to the national treasury for the said tract of land, hē had notified him (the said Romero) to pay into the public treasury of this city the sum of $1,297 6 reales and 5 grains in the following manner: $1,200, the amount for which this intendency sold said land; $70 6 reales

and 5 grains as the half yearly impost, besides its eighteen per cent; $24, as a two per cent general impost, and the remaining $3 as an impost of the abolished auditor's office of this treasury. As soon as these payments shall be made, and the corresponding certificate thereof attached to this expediente, the same shall be forwarded to the superior junta de hacienda for its approval, or such action thereon as may be deemed proper. Thus ordered, decreed, and signed with the assisting witnesses in the absence of a notary.

YGNACIO DE BUSTAMANTE. [RUBRICA.]
Witness: JOSÉ MARIA MENDOZA.
Witness: JOAQUIN ELIAS GONZALES.
[RUBRICAS.]

Immediately thereupon, Don Ramon Romero being present, he was personally notified of the foregoing order, and he declared himself so notified and signed with the intendente pro tem. and the usual witnesses.

BUSTAMANTE.
Witness: JOSÉ MARIA MENDOZA.
Witness: JOAQUIN ELIAS GONZALES.
[RUBRICAS.]

Provisional Junta of the National Treasury and Arizpe, January 11, 1822. Approval. The four sitios of land for raising cattle, comprehended in the place called San Rafael de la Zanja, situate within the jurisdiction of the presidio of Santa Cruz, are hereby declared to be legally, publicly, and solemnly sold in favor of Don Ramon Romero and other residents of the same military post, for the sum of one thousand two hundred dollars. And in consequence thereof this expediente shall be transmitted to the superior junta of the treasury in accordance with the order issued by this

intendencia in its former decision. Thus the gentlemen of this provisional junta unanimously decreed and signed.

BUSTAMANTE.
ESCALANTE.
FUENTES.
PEREZ. [RUBRICAS.]

To the intendente, lieutenant treasury, contador ad interim, promotor fiscal.

Arizpe, January 11, 1822. The decision of the provincial junta given in their meeting of to-day shall be complied with.

BUSTAMANTE. [RUBRICA.]

The principal ministers of the national treasury of Arizpe and its province. We certify that on folio 3d of the manual book of the present year the following entry is found:

Half yearly tax of lands. January 11, Don Ramon Romero, acting for himself and for the other citizens of the presidio of Santa Cruz, has paid $1,297, 6 reales, 5 grains, in the following manner: $1,200 as the price for which this intendencia has sold him the four sitios of royal land for raising cattle, which comprehend the place called San Rafael de la Zanja, situated in the jurisdiction of the said presidio; $70, 6 reales, 5 grains, as the half yearly tax and its 18 per cent express charges to Spain; $24 as the two per cent of general imposts, and the remaining $3 as a tax of the extinguished auditor's office of this treasury, as

is explained by the official note of this intendencia marked—

No. 1 ..... $1,297.-6-5

ESCALANTE.
FUENTE.
RAMON.
ROMERO.

In witness whereof we give this certificate at Arizpe on the 11th of January, 1822.

TOMAS DE ESCALANTE.
MIGUEL MA DE LA FUENTE. [RUBRICAS.]

The title on this expediente was issued on May 15, 1825, in favor of the interested parties, Don Ramon Romero and other residents of Santa Cruz (rubricas E. R. Pa. 7 a. vuelta. Notification. Vale.)

This is a true and legally copied testimony of the original title or matrix which exists in the archives of this treasury-general; it is corrected and compared upon these twelve sheets of paper, provided with the corresponding stamps. It is to be added that all the sheets which compose the original matrix consist of duly stamped paper. Authorized and sealed by me in the city of Hermosillo, the capital of the State of Sonora, Mexico, on the ninth day of the month of March, one thousand, eight hundred and ninety-four.

V. AGUILAR.

Rafael Yzabal, the constitutional vice-governor of the State, exercising the executive power: I certify that Don Victor Aguilar is, as his title says, the treasurer-general of the State of Sonora, and that the above is his signature.

Hermosillo, March 13, 1894.

RAMON CORRAL, *Secty*
RAFAEL YZABAL.

Victor Aguilar, treasurer-general of the State of Sonora, Republic of Mexico: I certify that the book of Toma de Razon for the year 1825 is not in existence, and that the signatures which are affixed to the original matrix and documents of the ranch called "San Rafael de la Zanja" are genuine, and therefore worthy of full faith and credit.

In witness whereof I issue this certificate in the city of Hermosillo on the ninth day of the month of March, one thousand eight hundred and ninety-four.

V. AGUILAR.

Office of the treasurer-general of the State of Sonora. Certificate of payment No. 232. I certify that Mr. Bartolome Rochin paid into this office the sum of $5.20, including the 30 per cent Federal fee for the attestation made by the governor of the State to the signature of the treasurer-general of the same.

Hermosillo, March 9, 1894.

THE TREASURER-GENERAL.

V. AGUILAR.

APPENDIX 2.

LAW NO. 197, OF THE STATE OF SONORA, MAY 14, 1852.

The acting governor, in the exercise of the supreme executive power of the State of Sonora, to all its habitants:

Know ye: That the Congress of the United States has decreed what follows:

Number 197.

The Constitutional Congress of the State of Sonora decrees the following law on surveying:

Article 1. The governor of the State is authorized to appoint two surveyors who shall be graduates, and, as long as these can not be obtained without advancing funds from the public treasury, to appoint two practical surveyors of known attainments, with authority to proceed both with the survey of the vacant public lands of the State as well as with the resurvey of those which, through denouncement or in the judgment of said surveyors or that of the treasury, may be defective.

2. *Demasias* are considered to be those that may be found within the true outboundaries of the grant titles, and they shall be excessive when they amount to the third part of the land which said titles may contain.

3. When the said *demasias* are not excessive, and the possessors apply for them with proof of having sufficient means for stocking them, they shall be adjudicated to them without public auction at the rates in

force at the present time. If they should not want them, they shall be adjudicated to denouncers in like manner. Should they be excessive they shall be sold to the highest bidder.

4. The possessors, within the general area of their titles, may select the principal land that may best suit them, provided they leave the *demasias* regularly united in one body in order that the treasury may alienate them to advantage.

5. In addition to the emoluments treated of in articles 66, 67, and 69 of the organic law of July 11, 1834, the surveyors shall be entitled to those which article 77 of said law assigns to them.

6. The assistants shall receive one dollar per day only for the time they may be employed in the survey, and they shall be paid by the locators or denouncers or by the public treasury, when the survey has not been previously petitioned for by some party and is begun by direction of the treasury only, for which expenditure it shall be reimbursed by charging it to the person to whom the lands surveyed may be adjudicated.

7. The surveyors themselves are empowered to take proofs for the identification of the boundaries in the event that the identity thereof can not be clearly ascertained from the titles.

8. They are also empowered, when they notice that the principal lands they may resurvey have not been appraised in conformity to the laws in force at the dates of their original surveys, to appraise them anew according to those same laws, giving timely notice to the treasury in order that it may cause the difference to be paid into the coffers of the exchequer, and may issue to the owner the certificate of payment, which it shall attach to his grant title.

9. The challenging of surveyors, whether they be practical surveyors or graduates, shall not be permitted. The party who may feel himself aggrieved has the right to allege the incorrectness of the survey, applying to the treasury within one month in order that it may appoint the other surveyor, or for lack of him a person of practical knowledge and who enjoys its confidence, who shall execute the resurvey that is questioned, at the expense of the responsible party, that is to say, at the expense of the surveyor, if the survey he made should prove to be in fact incorrect, or at that of the complainant, if it should not be; the decision of which shall be made by the treasury after examining the two *expedientes* that have been made up, and the opinion of the attorney-general of the treasury. For the last resurvey the prior surveyor must be summoned as a party in interest.

10. The surveyors are under obligation to notify the nearest authorities as to those lands that are not properly monumented, in order that they may cause the possessor to pay the fine of twenty-five dollars established by article 63 of the organic law. These fines shall be placed on deposit in the proper collector's office, the surveyor taking a certificate with which he shall make report to the treasury itself, in order that it may cause the fine to be paid in. The authorities also shall notify the said treasury.

11. The original *expedientes* of the lands surveyed that may be in the possession of the parties in interest they shall send to the treasury within one hundred days from the publication of this law, appearing personally or by authorized and paid attorneys to confirm their possessions. Those who may not do so shall have no right at any time to the adjudication without public auction. The ten years' possession which might be

acquired by that means does not constitute the title by just prescription treated of in the royal order of June 8, 1814, but rather those who may permit the one hundred days to pass without a cause entirely legal and justified shall lose by the very act the costs of their surveys and *expediente*, to be applied to the public treasury, if the lands are sold or adjudicated to another person, and if to the possessors themselves, they shall pay a fine of fifty dollars on account of the presumption of malicious concealment; all this without prejudice to the rental established by article 6, of law No. 51, of May 12, 1835.

12. The same one hundred days of article 11 are fixed for the commissioners to discharge the commissions they may have up to the publication of this law, and the two hundred days for those that may have related to lands on the frontier; the surveys that might be made subsequently being null and of no value, unless made by surveyors or under the provisions of article 9. But, if the surveyors should be at a great distance and there should be any petition relative to lands, the treasury may, to avoid prejudices, appoint special commissioners.

13. The treasury may appoint one more temporary clerk for dispatching the land business as the increase of work may require, fixing his compensation for the same at one dollar for each day's labor.

14. In order that no one may allege ignorance of this law, it shall be published twice in the first month, not only in the official newspaper, but also in each town of the State, to the sound of a drum and with all the formality possible by the proper authorities, which through the usual channels shall give notice of its publication, and the proofs thereof shall of necessity remain in the treasury for the consequent purposes,

with the understanding that if through neglect of the authorities the parties through ignorance of the law should take exception to the responsibility which its respective articles impose upon them, the authorities shall have imposed upon them a fine of a value equivalent to that which through their fault may have failed to be paid into the coffers of the exchequer.

15. There is repealed by this law the State law, number 121, of January 26, 1850, and article 68 of the organic law of the treasury of July 11, 1834.

The governor of the State shall direct that it be printed, published, and circulated, and that due compliance be given thereto.

Ures, May 14, 1852.

RAMON ENCINAS,
Deputy and President.

RAFAEL BUELNA,
Deputy and Secretary.

JOSÉ MARIA H. DE OSCOBOZA,
Deputy and Secretary.

Wherefore I command that it be printed, published, and circulated, and that due compliance be given thereto.

Palace of the State Government at Ures, May 14, 1852.

FERNANDO CUBILLAS.

JOAQUIN V. ELIAS,
Secretary.

O

In the Supreme Court of the United States

OCTOBER TERM, 1901

THE UNITED STATES, APPELLANTS,
v.
A. A. CHAMPEAU ET AL.

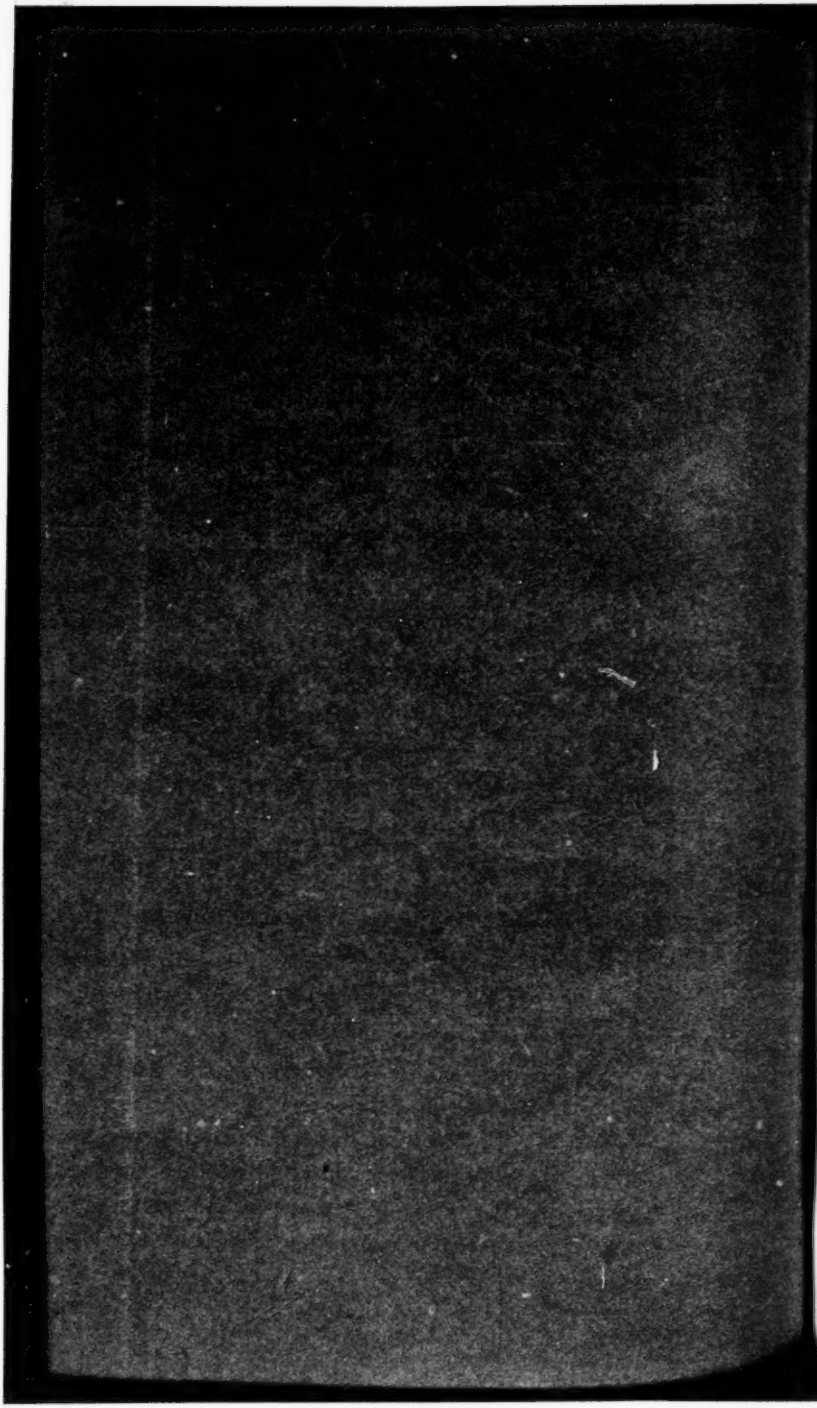
HARVEY A. CHAMPEAU AND CARRIE CHAMPEAU, APPELLANTS
v.
THE UNITED STATES.

No. 232.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

ADDITIONAL BRIEF FOR THE UNITED STATES.

INCLUDING SONORA LAW NO. 11 OF MAY 18, 1826.



In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT, *v.* A. A. GREEN ET AL. — No. 109.

HARVEY L. CHRISTIE AND COLIN Cameron, appellants, *v.* THE UNITED STATES. — No. 129.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

ADDITIONAL BRIEF FOR THE UNITED STATES.

INCLUDING SONORA LAW NO. 51 OF MAY 12, 1835.

1. Much has been said upon the argument of this cause as to Sonora state law No. 51, bearing date of May 12, 1835. That law translated in full is as follows:

> The constitutional congress of the State of Sonora decrees the following:
>
> ART. 1. Those who have acquired property in lands of the state by lawful title are holders in good faith (*poseedores en buena fe*), even when they have lost that document, for they are en-

titled to revalidate it upon proof of the incident that may have occurred.

ART. 2. So also are those who, under the boundaries set out in their proceedings of survey, occupy any overplus of lands to which they are always entitled, even when the overplus is shown, without other obligation than to pay for the excess according to the quality of the land and at the price that governed when it was surveyed and appraised; and only in case the holder does not need the overplus or when this latter is very excessive in the opinion of the Government, based on the report of the Treasury, shall it be adjudicated to whoever denounces or applies for it, who shall also be responsible for the resurvey, if no excess should be found. In lands measured by estimation, excess or deficiencies shall not be so considered when they do not exceed half a sitio.

ART. 3. The right of lawful possession is not lost because the land is deserted or abandoned provided it is caused by the hostilities or incursions of the enemy, as long as they last.

ART. 4. They are likewise holders in good faith who have obtained land by legal tradition. Those are reputed as such who have paid into the depositories of the public treasury the proper value thereof, and likewise all those who prove occupation in good faith, which must be respected even when the dominion of the possession is afterwards adjudicated to another person by disposition of the laws that govern in the matter.

ART. 5. In all the cases specified in the foregoing articles, and in others of like nature that

occur, when occupation in good faith is shown the holders have the right to dispose of their properties, or to be indemnified by the new occupants of the land for the essential improvements they may have made thereon. This shall be done by just appraisement by good and impartial men, and by a third in discord, appointed by the parties, and bound by an oath before the local authorities, under which understanding the bidders for land denounced by virtue of decree No. 10 of May 30, 1834, shall enter the bidding.

ART. 6. All who have arbitrarily occupied or occupy lands belonging to this State are reputed holders in bad faith, as are also those who, having allowed the various extensions of time given for legalizing their possessions to pass, have not paid their proper value into the treasury in time, and still continue to defraud the State of its dues, with malicious and culpable dissimulation. Upon proof of such reprehensible conduct, not only do the holders in bad faith become liable to lose the lands, and improvements they have made, but they shall thereafter be liable besides to a rental of 5 per cent of the value of the land for each year of arbitrary occupation.

Therefore I order it printed, published, circulated, and duly complied with.

Arizpe, May 12, 1835.

IGNACIO DE BUSTAMENTE.

JOSE MARIA FELIX,
Chief Clerk.

2. This law has been fully discussed in the brief heretofore filed for the Government (pp. 202 et seq.).

The attention of the court is recalled especially to the fact that this law does not declare the occupant to be the *owner*, but simply defines the character of his *possession* as being "in good faith." The importance of "good faith" as an element of possession in determining prescriptive rights as between private parties is pointed out in *Hayes* v. *United States* (170 U. S., 650). It was this element that this law added to the possession of the overplus lands (demasias). So far from investing the possession with ownership, the whole purport of the law is to the contrary, especially when construed with the law of 1852 and subsequent legislation on the same subject.

3. The limitation of four sitios imposed on the granting power by the law of February 14, 1805, has been already discussed in the principal brief (p 161). The land here involved had been petitioned for by *one* person, the amount had been surveyed in view of its being for *one* person, the advertisements had been of a tract sought by *one* person, and it was not until the very last steps in the proceeding—when the land was being auctioned off—that Romero, acting for himself and others whose names are not developed by the titles, bid off what had been sought by Bustillo, and by stepping into Bustillo's shoes bought what he wanted. But these shoes were of the *four-sitio size;* Bustillo's petition made them such; the law made them such. They could not be stretched to ten times their legal size by the fact that Romero had a number of associates. They in the aggregate might take only

what Bustillo could have gotten. If these various persons desired to secure land on their own account they must do it by denouncement proceedings instituted by them, not by stretching that instituted and prosecuted by Bustillo. The suggestion was made in the argument that in Perrin's case (171 U. S., 292) a grant of eight sitios was upheld.

In Perrin's case, however, the procedure was under the Sonora State law of May 20, 1825, which in terms permitted, under some circumstances, a grant of more than four sections, depending on the discretion of the treasurer-general. (Sec. 21, 22 Reynolds, p. 130.) In Perrin's case, also, there were more than one denouncer. Here, however, the title was consummated prior to the law of May 20, 1825, and is governed, not by that law, but by the cedula of 1805, above cited.

4. The payment of taxes on this grant by claimants and their predecessors in title, upon which much stress was laid in the argument, is entirely irrelevant as a matter of estoppel or otherwise. The Arizona statute under which these taxes are paid is one taxing, not the fee, but the possession. (*Maish* v. *Arizona*, 164 U. S., 599.) Since claimants have enjoyed the possession of these properties for years, invoking the protection of the public officers and the courts in maintaining such possession, it would seem a matter of simple justice that they should have been required to assist in supporting the Territorial government in return for the enjoyment of its privileges and its protection.

5. Upon the lack of a record of this grant, as required by the Gadsden treaty—a subject more fully

discussed on pages 235–240 of the principal brief—the case of *Osio* v. *United States* (23 How., 273) is instructive. In that case, as here, there was an expediente in the archives, and there, as here, there was no *toma de razón* of the grant. In discussing this state of facts, the court says (p. 279):

> Adjudications of land titles were required by the Mexican law to be recorded. That requirement, however, was regarded as fulfilled, according to the practice in the Department of California, when a short entry was made in a book kept for the purpose, specifying the number of the expediente, the date of the grant, a brief description of the land granted, and the name of the person to whom the grant was issued. In this case there is a certificate appearing at the bottom of the instrument to the effect that such an entry had been made, but it is wholly unsupported by proof of the existence of any *such record*. An attempt was made before the commissioners, or in the district court, to account for the absence of such record evidence by showing that a book of Spanish records of the description mentioned was consumed by fire at San Francisco in 1851; but the recollections of the witness called for the purpose are so indistinct, and his knowledge of the contents of the book so slight, that the evidence is not entitled to much weight. Jimeno, who signed the certificate, was not called, and in view of all the circumstances there does not appear to be any ground to conclude that any such record was ever made.

The facts of that case make it particularly applicable to the one at bar.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

○

Filed Oct. 30, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, *Appellant*,
v.
A. A. GRIMES ET AL. } No. 109.

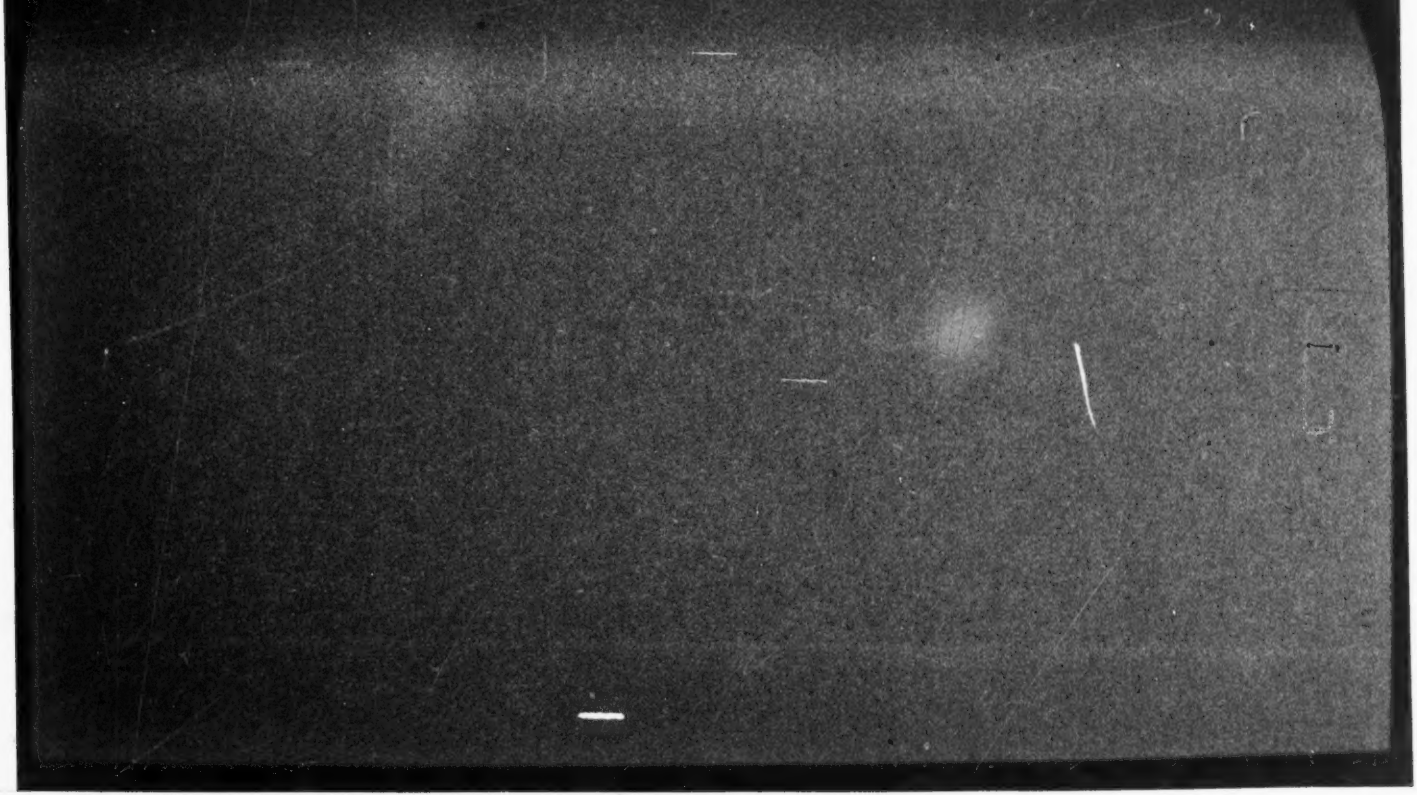
CHRISTIE ET AL., *Appellants*,
v.
THE UNITED STATES. } No. 129.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF AND ARGUMENT.

ROCHESTER FORD,
Of Counsel for Claimants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1901



Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, *Appellant*, v. A. A. GREEN ET AL. } No. 109.

CHRISTIE ET AL., *Appellants*, v. THE UNITED STATES. } No. 129.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

Statement of the Case.

The case of Green *v.* U. S. *et al.* was instituted by the filing of the petition of A. A. Green (rec., p. 1), showing that on the 15th day of May, 1825, the State of the West, in the Republic of Mexico, granted and conveyed to Ramon Romero that certain tract of land, now situated in the county of Pima, in the Territory of Arizona, known and designated as the "Rancho San Rafael de la Zanja," particularly bounded and described as follows: Commencing on the center of the tract at a place called at the time the grant was made "San Rafael," running thence northerly 200 cordels, being 2 leagues, to an oak tree marked with a cross cut thereon and a stone monument at the tree; thence easterly 200 cordels, being 2 leagues, to the northeasterly corner, marked by a heap of stones; thence southerly 400 cordels, being 4 leagues; thence westerly 400 cordels, being 4 leagues, to the southwesterly

corner, being on the Pacito de San Antonio, where there are two little hills; thence northerly 400 cordels, being 4 leagues, to a point on the Plumosa mountain; thence easterly 200 cordels, being 2 leagues, to the place of beginning.

The petition further recited that "the map hereto annexed shows the boundaries of said land, and the quantity thereof is 16 square leagues."

This description of the grant is meagre and inaccurate, but a fuller statement will appear later.

The United States filed an answer denying all the allegations on information and belief, and asking that the petition be dismissed (p. 3).

Colin Cameron, one of the defendants, filed his separate answer, in which he averred that he was the holder and possessor of said grant and all thereof; that he owned same by virtue of a grant title dated May 15, 1825, executed by Juan Miguel Riesgo, commissary general of the State of the West, in the name of the sovereign nation of the Mexican Republic; that the said land was sold and conveyed in fee after the proceedings of survey and valuation recited in the title papers, and that it was duly recorded in the archives of Mexico, and had been investigated by the surveyor general of Arizona and reported as genuine and recommended to Congress for confirmation to the extent of four square leagues.

The answer contained the following further allegation:

"Defendant further alleges that heretofore, to wit, on September 6, 1886, the United States of America, one of the defendants herein, brought suit against this defendant in the district court of the Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in circuit and district courts of the United States; that said suit was brought under the act of Congress approved February 25, 1885, entitled 'An act to prevent unlawful occupancy of the public lands,' and that the complaint in said suit alleged that this defendant had enclosed a large tract of

the public lands belonging to the United States of America subject to entry at the proper land office under the laws of the United States in such cases made and provided; that the lands so enclosed were in the first judicial district of the Territory of Arizona, in the county of Pima, and that the defendant had enclosed, as aforesaid, about 800 acres of the public lands without any title or claim or color of title acquired in good faith thereto, and without having first made application to acquire title thereto or of any part thereof according to law; that this defendant answered in said cause and averred that on May 15, 1825, the Republic of Mexico granted to one Ramon Romero and other citizens of Santa Cruz the tract of land known and described as the 'Rancho San Rafael de la Zanja,' the boundaries of which tract were fully and particularly described in said answer, which grant and tract of land was and is the same San Rafael de la Zanja grant owned by defendant as hereinbefore in his answer in this present case alleged; that this defendant further alleged in his answer in said cause that he was the owner of said land grant San Rafael de la Zanja, and that the enclosure referred to in the complaint therein was within the original boundaries of said grant as the same was surveyed by the Mexican authorities prior to the issuance of title to same, as said survey is set out in the original title paper of said grant.

"Defendant further alleges that said cause was thereafter tried by the court sitting without a jury, and evidence was therein introduced as to the ownership by this defendant of said grant and of the location of said enclosure, and of the location of each monument described in the testimonio of said grant, and findings of fact were made in said case, and in said case it was found and adjudicated that this defendant had succeeded to all the right, title and interest which Ramon Romero ever had in or to said grant, and had all such right, title and interest of Romero in said grant, and it was further found and adjudicated in said case that the fence maintained by this defendant was within the exterior boundaries of said grant as said boundaries were recited as measured in the expediente or title paper of said grant, being a mile and a quarter south of the northern boundary and four miles west of the eastern boundary of land recited as measured in said title paper; and it was further found and adjudicated in said case that the map

hereto attached as 'Exhibit A' is a correct representation of the land included within the boundaries described in the original title paper of said grant, and that said map correctly represents the location of each monument called for and described in said title paper, and defendant avers that the lands claimed by him are all the lands embraced within the original survey of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant, filed herewith as Exhibit 'A,' and that said monuments are located according to said map as follows:

"From south center monument at mouth of Potrero north eighty-four degrees ten minutes east four miles, six chains to the Jaralito; thence north thirty-five degrees east eight miles, ten chains to the east center monument; thence north two degrees forty minutes east nine miles, sixty-seven chains to the northeast corner monument; thence south eighty-seven degrees thirty minutes west nine miles, eight chains to the tree, being the north center monument; thence south eighty degrees fifteen minutes, west six miles, seventy-nine chains to the northwest monument; thence south eleven miles, thirty chains to the west center monument; thence south four degrees, thirty minutes east three miles, forty chains to the monument on San Antonio pass, being the southwest monument; thence north eighty-six degrees forty minutes west six miles to plac : of beginning; variation twelve degrees fifteen minutes east.

"And defendant pleads such findings of fact as to the monuments and location of said San Rafael de la Zanja grant as *res judicata* therein.

"Defendant further avers that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete and lawful, and vested a perfect and valid title in fee thereto in the grantees of said grant, and that said grantees immediately after the survey of the said tract of land, as set out in the title papers of said grant, went into the actual possession, use and occupation of the whole of said tract of land, claiming title to the whole of said tract of land to the monuments described therein; that said grantees and their successors in interest have continuously remained in possession of all of said tract of land under such claim of title from the survey of said

tract to the present time, and were in the open and exclusive and peaceable possession of all of said tract, claiming title to the whole of same, at the time of the treaty between the Republic of Mexico and the United States of America; that said grant documents constitute a complete and definitive grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and that this defendant is entitled to a confirmation or recognition of his title to said grant in accordance with the metes and bounds set forth in the original survey and grant of the same; that said grant was not a grant by quantity, but was a sale by the metes and bounds and natural landmarks established by the said survey thereof made by the Spanish officials prior to the issuance of same, and that it vested in the grantees a perfect and valid title in fee to the whole of said tract so surveyed.

"Defendant further avers that prior to said treaty known as the Gadsden treaty, no resurvey of said grant had ever been applied for or ordered by any one, and that none of the grantees or their successors in interest had, prior to said treaty, any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and defendant further avers that if this honorable court should decide that said sale as recited in said title papers did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the

same, as soon as the amount of the same and the sum due therefor is ascertained.

"Wherefore defendant now tenders to the United States of America, and offers to deposit with the clerk of this honorable court for the United States of America, the sum of $1,359.00 in gold coin of the United States of America as payment for all such overplus or surplus of said lands in said grant, according to their quality and the price which governed when it was surveyed and appraised, and the further sum of $200 in like gold coin for the costs of ascertaining and determining the existence or non-existence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender, and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for any such overplus or surplus, and prays that upon said payment this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the ownership and possession of the whole of said tract, and defendant, answering herein by reason of the fact that he has been made a party defendant, prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and the defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises."

One Harvey L. Christie, who was understood to assert some claim or title to the lands adverse to the United States, was by order of court (p. 12) made a party defendant, and filed a separate answer, claiming that he was the owner of the grant, and a similar averment as to a tender for any surplus that might be found in the grant (pp. 15, 16, 17).

On the trial claimants read and offered in evidence, without objection on the part of the United States, a certified copy of the expediente or matrix of the San Rafael de la Zanja grant under the certificate of the treasurer general of the State of Sonora, and also the original titulo or title to the

grant (rec., pp. 18, 525). Certain deeds showing deraignment of title and several other documents, the effect of which will be set out in the argument herein, were offered also (pp. 19, 33–64, 385, 446, *et passim*).

A summary of the expediente or title of this grant was given by this court in the case of Cameron *v.* U. S., 148 U. S., 301, in which the court said that the expediente appears to have been obtained in the following manner:

"On July 19, 1821, Don Manuel Bustillo applied to the governor intendente of Sonora and Sinaloa to purchase at auction four square leagues of land for the raising of stock at the place named, de la Zanja, 'three square leagues of land (*tres sitios de tierra*) in the same presidio in which I reside and outside of the boundaries thereof and on the side of the north, and one square more (*un sitio mas*) for an "estancia" in the place of the "cajoncito" on the side of the east;' and prayed for a measurement of the land by the proper officers, and for a valuation of the same. Upon this petition the intendente ordered a measurement of the lands, summoning the adjacent land-owners and appointing appraisers for the valuation of the land, publication to be made for thirty days for the purpose of soliciting bidders. The measurements were made (the details of which are fully set forth), from a central point named San Rafael two leagues in each direction—*i. e.*, to the four points of the compass—and monuments were put up on the four corners of the square as well as in the center of the four exterior lines. All these monuments were placed at the times the lands were measured under the authority of the government. The monuments included four leagues square, or sixteen square leagues.

"Upon the completion of this survey, the lands were valued at $60 each for the three square leagues, for the reason that they contained permanent water, and the remaining square leagues at $30, for the reason that it contained no water, except as is furnished by wells. The land was thereupon put up at auction, and after some spirited bidding between Bustillo and Romero, was struck off to the latter for $1,200 and the grant made to him by the proper officer in the name of the Mexican Republic, in which the land was described as four square leagues for the raising of cattle

(*cuatro sitios de tierra para cria de ganada major*), included in the place called 'San Rafael de la Zanja,' situated in the jurisdiction of the presidio of Santa Cruz, to Don Ramon Romero and other citizens (*vecinos*) interested. The grantees were also required to confine themselves within their respective limits, 'which are to be designated by monuments of lime and stone' (*mojoneras de cal y canto*), and were guaranteed the free enjoyment and quiet and peaceful possession of said lands."

As to the books of toma de razon, or record of grants, now existing in the archives at Hermosillo, it was proved (rec., p. 92) that there are only two, "one a very small book, with not over a dozen leaves in it, dated somewhere about 1824 or 1825, and the other a much larger book, beginning some time in the 30's."

Evidence was introduced by claimants as to the location and existence of the permanent water and the natural objects and monuments called for in the grant, and opposing evidence by the United States, which evidence will be set out and its effect and weight referred in the argument. It was found that the measurements had not been accurately made, and whereas the tract would have included four leagues square, or sixteen square leagues (so called), if the officials had measured exactly two leagues in each direction from the central point, in view of the inaccuracy of the measurements and the fact that a number of the distances were estimated on account of the roughness of the tract of land, the monuments as a matter of fact include more than four leagues square.

The majority of the lower court entered a decree "confirming the grant to the extent of four sitios, the same to be measured in a square from the center established by the Mexican surveyor who made the original survey."

Two of the judges dissented on the ground that the grant had not been recorded in accordance with the provisions of the treaty.

Appeals were taken both by the United States and by claimants and duly prosecuted to this court.

SPECIFICATION OF ERRORS.

The court erred in refusing to confirm this grant for all the land contained within the monuments of the original survey.

POINTS AND AUTHORITIES.

I.

Lands measured as this grant was, to wit, 200 cords or two leagues in each direction from the center, were said to contain "four leagues."

See order of Pedro de Nava, October 22, 1791, Reynolds, p. 62.

II.

The survey of this grant was for the purpose of segregating the land applied for and afterwards sold, and the purchasers acquired title to the whole of the surveyed tract. The delivery of juridical possession immediately after and in accordance with the calls of the survey fixes the boundaries of the land sold.

See title papers.

III.

Grants in Sonora were not like the grants by quantity, or floating grants, of California, but were located tracts of land identified and segregated by the survey preceding the sale. The object of the survey was to mark the boundaries of the land sold, and the purchasers acquired title to the specific tract so designated. The delivery of the title in pursuance

of the survey was the investiture of a complete title to the specified tract, with no future act to be performed.

See title papers.

See opinion of Justice Sluss in case No. 143, October term, 1901, of this court, Arivaca Land and Cattle Company *v.* U. S.

Spaulding on Public Lands, sec. 511.

IV.

The title papers of this grant and the documents set out in the record herein show that the purchasers did not wait for the delivery of the title papers before going into possession, but went into possession of the whole of the surveyed tract immediately after and by virtue of the survey, and at least nine years before the delivery of the title. This was an official or juridical delivery of possession of the tract, and established its boundaries as those marked by the survey.

See record, pp. 449 and 532.

Pico *v.* U. S., 5 Wall., 536.

Graham *v.* U. S., 4 Wall., 259.

Maxwell land grant case, 121 U. S., 325, 369–373.

V.

This court has stated when this title was before it in a former case that "the limits of this grant were to be designated by monuments of lime and stone; that such designation was actually made; and that juridical possession of the land was delivered in pursuance thereof."

Cameron *v.* U. S., 148 U. S., 301, at p. 309.

VI.

The land sold in this grant was appraised and sold as to its quality, namely, three squares or quarters containing permanent water and the remaining square to be made use

of by a well. The evidence shows that the tract as surveyed does contain three quarters each with permanent water, and the remaining quarter without such water, and further shows that if the measurements are shortened so as to include only four leagues (as the words are commonly used), or even four leagues square, neither of such tracts will include the permanent water, and the grant will be of little, if any, value.

Rec., pp. 144–161.

VII.

The testimony shows that the purchasers at the time went into possession of and occupied the whole of the tract embraced within the original monuments, claiming title and ownership of all of the land. The practical construction thus given to the grant at the time is evidence that the intent of the parties was to acquire the whole tract.

Rec., pp. 206, 208, 209.

Topliff *v.* Topliff, 122 U. S., 121.

This practical interpretation by the parties themselves is entitled to great, if not controlling, influence.

VIII.

The price paid for this tract of land, taken in connection with the prices for which land of the same quality sold in the same vicinity at the same time, shows that the purchasers were not buying four leagues (as the words are commonly used) but the whole tract.

IX.

Where, in Sonora, questions of excess arose in grants, due to inaccurate measurements or computations, the remedy was by a further payment by the grantee, and not by a cur-

tailment of the land surveyed, and the claimants of this grant are by virtue of their tender, as disclosed by the record herein, entitled to any surplus.

Law of Sonora of May 12, 1835.

X.

The grant was duly recorded in pursuance of the Mexican laws and customs.

Applegate *v.* Lexington & Carter County Mining Co., 117 U. S., 250.

Stebbins *v.* Duncan, 108 U. S., 32, 50.

Record, pp. 91, 92, and 233, 234.

ARGUMENT.

At the very outset of this case we find an apparent difference between it and the others which have come before the court. This difference consists in the fact that the measurements, if accurately made, would contain four times the quantity called for (using the word sitios in the generally accepted meaning), while in the other grants the measurements, if accurately made, would contain the exact quantity called for. The quantity is spoken of "four leagues," whereas the monuments include four leagues square, or sixteen square leagues, as we use the word.

A league, or sitio, as generally understood, is a tract of land whose height multiplied by its width will give an area of 10,000 square cords, or 4,338.464 acres. Four sitios would contain an area of 40,000 square cords, or approximately 17,372 acres. Four square leagues (as commonly understood) would be laid off by measuring a square one league, or 100 cords, from a central point in each direction, thus giving a tract of land 200 cords on each side, and if not measured in the form of a square it would be a rectangle,

the height of which, multiplied by the breadth, would equal 40,000 square cords. For instance, the Canoa grant passed on by this court in the case of Maish & Driscoll *v.* U. S., 171 U. S., p. 242, calls for four sitios, and the measurements disclose a figure 400 cords in height by 100 in width, containing 40,000 square cords. The San Rafael del Valle grant, passed on by this court in Camou *v.* U. S., 171 U. S. p. 277, called for four sitios, and was of the same height and width as the Canoa. The Sonoita grant, passed on in Ely's Adm'r *v.* U. S., 171 U. S., p. 220, called for one and three-quarters sitios, and the measurements disclosed a tract 50 cords wide by 375 in height, containing 17,750 square cords, or just one and three-quarters sitios according to the face of the papers.

These instances are given to show that the Mexican officials at the time the San Rafael grant was made possessed accurate knowledge of the area of a sitio and what measurements were required in order to give a tract of any required number of square leagues. The Spanish attorney general Perez, who, under date of December 20, 1821, reported that he had examined "with due attention" the expediente in this case, is the same official who, under date of November 7, 1821, had reported on the Sonoita proceedings, and on December 9, 1821, on the Canoa expediente, and the other officials in these various grants were the same, for the grants were made under the same laws and at the same time.

It would, therefore, seem wholly untenable, as well as most ungracious, to ascribe to these Mexican officials, especially in view of the proof to the contrary, such a degree of ignorance of their own laws and land measures as to suppose that they did not know that a tract of land 400 cords on a side would contain more than 40,000 square cords, or four leagues as generally understood by us. On reading this title paper it is apparent even to an American attorney that a tract of land 400 cords on a side would contain 160,000 square cords, or sixteen square leagues as we term

them. It would seem that no one can read the measurements without at once noting this apparent discrepancy between the terms of the grant and the survey that was made in pursuance of it. How then, it will be most naturally and pertinently asked, could the Spanish attorney general and other officials have failed to notice this mistake, if it was a mistake? The lower court held that the tract should have been measured 100 cords in each direction from the central point. When the Spanish attorney general read these proceedings, why did he not at once say, "the measurements do not give four leagues but sixteen leagues?" The proceedings of survey were placed before him for his opinion. When he gave it, there arose, as this court has termed it in other cases, "A very strong, if not irresistible presumption that everything preceding it had been lawfully and rightfully done." The report of the attorney general (p. 529) is that "he had examined with due attention this expediente of land surveyed, from which there resulted four sitios, which were appraised at the rate of $60 each for three of them, as they had running water, and $30 for the fourth as it had none, and could only be improved by wells." The Governor Intendente had finally approved the proceedings, stating that the foregoing proceedings of "measurement, appraisement and sale of the four square leagues were in all respects regular and sufficient." Nothing remained to be done except to pay the money.

Unless we are prepared to reverse the presumption above cited, and to hold that there was a mistake made in these measurements, and that the attorney general and all the other officials were too ignorant to detect this mistake, we are forced to take the language as it is and to say that the four sitios referred to were the four square figures or quarters formed by the survey, each of which was 200 cords on a side, and each of which was in this grant called a sitio. The language of the grant is not explainable under any other theory, but under this construction it is clear and un-

ambiguous. There resulted from the survey four quarters or squares or sitios. The tract of land surveyed was uniformly spoken of as containing four sitios or squares. Moreover, these sitios were particularly identified from the fact that three of them contained running water and the fourth or remaining one could be improved only by wells, which three wet sitios or squares, together with the remaining dry sitio, comprise the whole of the tract as it is constantly referred to.

It will furthermore be shown by an examination of the evidence that this theory is in correspondence with the physical condition of the country, and that taking the four squares into which the survey was divided by the measurements made 200 cords from the central point, three of them are found to contain running water and the fourth is used only by means of a well, and it is highly significant that this dry sitio has had on it from the time the purchasers took possession of this grant a settlement called "La Noria," or The Well, thus showing that it is the dry sitio mentioned in the title.

The holding in the Ely's Admr. case, *supra*, was that where there are measurements which, if accurately made, would comprise the quantity called for, the measurements should now be made accurately, as it may be presumed it was the intention to do at the time. If this rule were applied to the present case, the court would hold that this grant should be confirmed for a tract of land measured accurately 200 cords in each direction from the central point. We will endeavor to show that the facts in this case are so different from the Ely case that a different decision must be called for herein. But this court did not hold, nor has any court ever held, that the mention of quantity alone is the controlling consideration. Where there is a difference (if it should be thought that there is a discrepancy in this case) between the quantity and the survey actually made, it

is submitted as unquestioned law that the survey must control.

Our theory above set out, that the four sitios referred to herein must mean the four squares of 200 cords each, seems to us probable and rational, but we are not left solely to our theory or construction of this grant. On the contrary, we have evidence of the highest order that grants measured as this one was were said to contain "four leagues," and that the apparent discrepancy arises only because the Spanish idiom is different from ours. The court is referred to the order of Pedro de Nava of October 22, 1791, appearing on page 62 of Reynold's Spanish and Mexican Land Laws, as follows:

"CHIHUAHUA, *October* 22, 1791.

"In accordance with the opinion of the assessor of this Commandancy General, I have resolved by decree of today, that, notwithstanding the provisions of Article 81 of the ordinance of Intendants, it belongs to the captains of presidios to sell and apportion lots and lands to the soldiers and residents who apply for them to establish their residence thereon.

"Considering sufficient for the new settlements that are being formed under their protection, the boundary of four common leagues, measured from the center of the plaza of the Presidio, two to each wind, I have also determined, in order to avoid doubts and appeals in the future, that the Captains limit themselves hereafter in the concession of grants of lots and lands to those that shall be included in said four leagues, without their being increased in any manner, leaving free and operative the exclusive jurisdiction that belongs to the Intendants of the Royal Treasury for the sale, composition and apportionment of the other lands in their respective districts.

"That this order may be punctually complied with and observed, you will circulate it to the Captains and Commandants of the Presidios in that province, giving me notice of having done it.

"God preserve you many years.

"PEDRO DE NAVA."

This San Rafael grant was made in precisely the same way as the settlements referred to in the foregoing order, namely, two leagues from a central point to each wind, and as the Spanish call the result of such measurements four leagues, instead of sixteen leagues square, as we should term it, it is quite reasonable and probable that the same words had the same meaning in the grant under consideration.

The confusion between square leagues and leagues square was not uncommon in the department of California and other parts of Mexico. In U. S. *v.* Pacheco, 22 How., 225, the call was for "two square leagues," but, as shown by the opinion of the court therein, the plan presented by the party and referred to in the grant showed, when taken in connection with the evidence of witnesses explaining its contents, that the body of land petitioned for and granted was something more than two leagues long and about two leagues wide, and the court held that "nothing could be more manifest than that the grant was intended to give a rancho of at least two leagues on each side line, making four leagues in superficies," or two leagues square. To find the true quantity intended to be granted, the court said it was bound to give due weight to the plan or map, and as the call for two square leagues and the map were inconsistent and plainly contradicted each other, and the adoption of the one must necessarily reject the other, the court considered the map as controlling.

We think this case very similar to the present one. Even if the apparent discrepancy as to four leagues is not completely explained by the use of the term as shown in Nava's order, and it should be considered that there is a conflict between the call for four square leagues and the survey, then the survey will have precedence over the mere designation of quantity.

A question that persistently arises in this case is, If the officials intended to convey a tract which would be 100 cords from the center in each direction (40,000 square cords), why

did they not survey such a tract at the time, and if the surveying officials were so ignorant as to make an error, why was it not corrected by the attorney general when he passed on the proceedings?

We submit:

First. They did not intend to convey a tract 100 cords in each direction from the center because they did not survey such a tract, and there is no room for theorizing that they intended to do something wholly different from what they did do.

Second. They did not intend to convey an unsurveyed four sitios (40,000 square cords) within the boundaries of the tract which was actually surveyed and monumented, because the title papers absolutely state that the appraisement and sale was of all the surveyed lands, and not of a portion within the boundaries.

Third. It could not have been in their minds to convey four sitios (40,000 square cords) to be afterwards surveyed, because such proceeding or grant was unknown to the law. Lands in Sonora could be sold only after they had been surveyed and appraised. A grant of an unsurveyed quantity to be located by means of a subsequent survey was never heard of in what is now Sonora and Arizona.

In view of the light that has been thrown on the subject of these Sonora grants during the many years of their pendency before the lower court and this court, it is believed that entirely accurate statements can now be made both as to the written laws of Mexico governing them and also as to the interpretation of such laws as shown by the practical construction of the Mexican officials. In an important respect the Sonora grants differ radically from the grants made in California, known as grants by quantity, or floating grants. In those grants the donee went into possession of an unsur-

veyed tract of land, designated only by its general boundaries, and the particular quantity granted to him was thereafter surveyed and segregated out of this tract. The California title papers provided that the proper magistrate should cause the quantity to be surveyed, and the statement was generally added that the surplus was "reserved to the nation for its convenient use." But in the Sonora grants the survey and segregation and possession thereunder in every case preceded the sale of the land and the delivery of the title papers. Where a person acquires title to land, of course the land must at some time be identified on the earth's surface. The private property of the purchaser must be separated from the public domain, which was done by a survey and monumenting of the land so donated in California or sold in Sonora. When, in California, the survey was afterwards made, "by this proceeding—called in the language of the country the delivery of juridical possession—the land granted was separated from the public domain, and what was previously a grant of quantity became a grant of a specific tract" (U. S. *v.* Graham, 4 Wall., 259; Malarin *v.* U. S., 1 Wall., 289; U. S. *v.* Pico, 5 Wall., 536). The very object of the survey preceding the delivery of possession was to turn the grant of quantity into one of a specific tract, which thereupon became private property.

The object of the surveys set out in the Sonora grants was exactly the same as this, and the effect exactly the same, viz., to identify on the earth's surface the land which was appraised and sold and delivered to the purchaser and possessed and held by him as his private property. The quality of the land determined its price, and the survey determined what sitios contained running water and what were dry, thus fixing the quality as well as quantity.

It is true that in making the surveys great errors as to distances, and therefore as to areas, were made, as is shown by later surveys, but this fact does not throw any doubt on

what was the intention of the parties. No early survey was accurate, either in California or Sonora or in Kentucky in the early day, and no survey can be accurate in a rough and mountainous country when many of the distances are estimated, and when those who make the measurements and computations are destitute of any surveying skill.

How such mistakes as to quantity should be corrected is a different question and will be discussed later. What we are now urging is that the grant itself was of the land as surveyed. It was a designation on the earth's surface of the quantity intended to be sold, and was the final act of the government conveying title to the tract without any further act to be performed.

Suppose that there was a grant by quantity in California of, say, four leagues, and that afterwards the proper officer surveyed the four leagues and established the boundaries thereof, and went through all the formalities of the delivery of juridical possession, so that what was formerly a grant of quantity became a grant of the specific tract so delivered, and further suppose, as must have been true in every instance, that in measuring the tract, in order to deliver juridical possession thereof, mistakes were made, so that the tract delivered was, in fact, much greater than four leagues. We have in other briefs cited, regarding the inaccuracy of Mexican surveys, what this court said in U. S. *v.* Billings, 2 Wall., 444, at page 447: "Perhaps the province of California at that time (1839) could not furnish a man capable of making an accurate survey," and also the language of the court in Noe *v.* U. S., 1 Hoff Land Cases, 162–169, referring to an estimate of the contents of a tract of land: "This is perhaps as close an approximation to the real quantity as often occurred under the loose and inaccurate ideas of the extent of land formed by the former inhabitants of this country." It is notorious that the quantity of land within the natural boundaries of Mexican grants often far exceeded the estimate of the surveyor, but this cir-

cumstance did not restrict the language of the grant or change the boundaries or the intention of the parties (White *v.* Burnley, 20 How., 247).

If such a tract of which juridical possession was delivered was found to contain more than the quantity of four leagues, could it be urged that it was not intended to deliver possession of the whole tract, or that the grantee did not acquire title to all of it? If this were urged, the answer would be that the very object of the proceeding of survey and juridical possession was to mark out and segregate a tract, intended and supposed to contain the exact quantity, and that the whole of the surveyed tract passed to the grantee. The argument that the whole of a tract could not pass to the purchaser because it was inaccurately surveyed, would put it out of the power of the Mexican government to sell and convey title to all of the land, whether it be more or less, within the boundaries established, because of the fact that it did not lie within human power to estimate the area within those boundaries correctly.

The above reasoning applies to the Sonora grants. The applicant petitioned for a quantity of land, but this was not all of his petition. His petition was not for an unidentified, unsurveyed quantity. On the contrary, his petition further requested that the government should cause this quantity to be surveyed and appraised and the other formalities gone through with so that the quantity which he applied for might be designated on the earth's surface. He was a practical man engaged in raising cattle, and it was essential that the government should survey off to him on the earth's surface the land which became his, so that he might know where his corner monuments were and might be able to say, "My land runs from this point to that because it has been surveyed by the government and those points have been designated as my boundaries." He could thus keep others off from his land and ask to be protected in the possession of that which was his.

The proceedings following the presentation of the application were for the very purpose of carrying out the request of the applicant and of segregating and selling to him the land which he asked for when he stated that he "needed a tract of land" for his stock It does seem unreasonable even to suggest that the survey was made for any other object than this.

Every order made from beginning to end of the proceedings shows that this was the object and the sole object of the survey. In accordance with the prayer of the petitioner in this grant (p. 526), that the "usual order be issued for the survey of said land"—that is, of the land which was registered—an order was made that "the commandant will proceed to make the survey of the lands registered by the applicant, summon the owners of coterminous lands, and appoint expert appraisers to make fair valuation thereof, which he shall publish for thirty consecutive days in solicitation of bidders, and shall take all the usual proceedings until the expediente is in condition for the final sale." The commissioner "to begin the survey of the four sitios for breeding cattle denounced by Bustillo" began the survey, continued it, and finished it with the statement that "with which survey was formed the square of the four sitios registered by Don Manuel Bustillo for breeding cattle, who accepted the same, and was cautioned that he must at the first opportunity mark his boundaries with monuments of stone and mortar as provided."

"The square of the four sitios" means simply that the lines were run connecting the four corners so as to complete the survey. Sometimes these exterior squaring lines were run, as in this case, whereas in other cases this part of the survey was omitted.

The language of the appraisement is peculiarly clear (p. 509):

"Thereupon said commandant proceeded to the corresponding appraisement by intelligent experts, who under

formal oath made in accordance with the knowledge they had of all the land, and with the superior disposition on the matter, giving a valuation of $60 to each of the three sitios that have permanent water, and $30 to the other one, as it is susceptible of improvement by wells. With this fair valuation the commandant of Santa Cruz published said four sitios for the term of thirty consecutive days in solicitation of bidders."

It was "*all* the land" that was appraised, and *all* the land consisted of three sitios with running water and "the other one" that was dry. Can any one in good faith urge or even suggest that the appraisement was only of a small part of the tract and of an unsurveyed and unidentified part?

Testimony was taken that the applicant had "sufficient stock to keep the land stocked and protected," and an order was made to sell the land and payment therefor was acknowledged, all the proceedings referring absolutely to the surveyed tract.

At this point it is proper to call the attention of the court to the important fact that possession was taken under and by virtue of the survey, and according to the boundaries established by it, and was not deferred till the delivery of the grant title. The records show in many cases that, as in this case, after payment was made for the land, the purchaser did not receive his formal title for several years. He was in possession by virtue of the delivery of the land to him after the survey and his payment therefor, and was in no hurry to take out the formal title, evidently because he had to pay a further fee, which he deferred as long as possible.

The express proof that this was true in this case is shown by the document on page 532 of the record herein, where, under date of January 16, 1831, the purchaser, Ramon Romero, was requested to pay for and receive the formal title to his lands, which had been sold to him and the other

residents on January 10, 1822. This document is in full as follows:

"ARIZPE, *January* 16, 1831.

"Mr. RAMON ROMERO.

"MY DEAR AND ESTEEMED SIR: The commissariat general of this State has entrusted to me the delivery, to the respective parties in interest, of various titles to the grant and confirmation of lands surveyed, appraised, sold and adjudicated by the treasury of the federation prior to the classification of revenues, upon previous payment of fifty dollars in fees due on each one of them; and that of the place called San Rafael de la Zanja, which was knocked down to you and the other residents of that presidio on the 10th of January, 1822, being among said titles, I inform you thereof that you may be pleased to take it out of the section of the treasury under my charge as soon as possible, as is requested by your attentive, affectionate, obedient servant, who kisses your hands.

"J. M. M. [RUBRICA.]"

This document precludes the theory that there was to be any further survey or delivery of possession when or after the title paper was delivered. As will be seen by what follows, the grantees had been in possession from the time of the survey, and nothing remained for them to do except to pay the final fee and receive their title paper.

The document on page 449 shows that the purchaser took possession immediately after the survey and before the title was issued. This document is quite interesting and instructive, as giving the particulars of the sale. It contains the express statement that "I understand that until the title be issued to the said first parties, I must maintain their possession and control (of said lands) without permitting that any person in any manner may infringe upon said possession;" and also the statement "that until the title of the said land be issued to the residents, they must protect their possession and control thereof, which they hold by the adjustment and overbidding (best bid), which were approved by

the national treasurer of the Mexican Empire, and must not allow any person or anything to infringe upon their rights of possession, but keep them protected as is just and obligatory."

The original denouncer, Bustillo, had advanced the fees of the surveying and other officials and went into possession of the lands after the survey, but when he was outbid at the final sale, he turned over the possession to the purchasers and received back the sum which he had advanced, an itemized list of which is given (rec., p. 450), and the purchasers remained in possession for at any rate more than nine years before the grant title was delivered to them.

As we have heretofore shown, this survey and delivery of the tract as surveyed was the delivery of juridical possession as fully as such possession was delivered in the California grants.

In the case of Ainsa *v.* U. S., 161 U. S., p. 208, the court said that appellant's contention in that case that the grantee took all the public lands north of Casita "as one tract by metes and bounds, could be sustained only on proof of a determination of such metes and bounds by actual survey and delivery of possession accordingly."

These requirements are exactly complied with in the present grant. There was the actual survey, the determination of the metes and bounds, the monuments placed at the time the lands were measured under the authority of the government and the delivery of possession which the grantees of all the land took within those monuments.

It is apparent that juridical possession was delivered of the whole of this San Rafael tract as surveyed, and this court so held in construing this very title in Cameron *v.* U. S., 148 U. S., 301, where the language is, "While a grant of our square leagues in the place called San Rafael de la Zanja, standing alone, would appear to have been a grant of a certain quantity of land, when it appears by the same instrument that the limits of the grant were to be desig-

nated by monuments of lime and stone; that such designation was actually made; and that juridical possession of land was delivered in pursuance thereof; it is at least open to doubt whether it does not fall within the class of concessions by specific boundaries, as these grants are distinguished in U. S. *v.* McLaughlin, 127 U. S., 428," and the court further stated, referring to Fremont *v.* U. S., 58 U. S., 542, "as no survey in that case was made, it was held to be a grant of quantity only."

The survey is the controlling feature and the distinguishing test. If this were a grant by quantity it would not have been surveyed at the time. But the survey was expressly "of the four sitios for breeding cattle denounced by Bustillo," and the center of these sitios was fixed at the central point, and the corner monument established as stated. The grant is not one of a tract by name, nor is it one of an unsurveyed quantity, and there is only one other kind remaining, namely, a grant of a specific tract according to a prior survey.

Except on the theory that the survey was made to identify the land sold, why was a survey made at all? If the intent was to grant a tract measured 100 cords in each direction from the central point, why was not such a survey made at the time? When the survey herein referred to was made, if the surveyors had measured 100 cords in each direction from the central point and then stopped, they would have had a tract of four sitios (40,000 square cords). Did they go 100 cords further and measure a tract 200 cords in each direction from the central point, containing 16 sitios (as we term them), in order that they might afterwards go back and duplicate the work and measure 100 cords from the center in each direction, which could have been measured at the time with less labor than the 16 sitios were?

The beginning of the survey was made by fixing the central point, and the southwest corner was "beyond San An-

tonio pass, on two small hills that serve as the west corner of the lands of this presidio (of Santa Cruz), which point should serve as the corner monument *of these sitios* (p. 528)."

We invite the attention of the court to this explicit statement in connection with the other language of the grant. The center, as heretofore stated, was the center of the four sitios denounced by Bustillo, and the southwest corner is said to be the corner monument "*of these sitios.*" This language absolutely negatives any theory that the survey was a tract of land within which the four sitios were afterwards to be surveyed. As the southwest corner was the corner "*of these sitios,*" so the other corners were. The northeast corner monument was to be placed at the point of the Sierra del Cobre mountains, above the spring known as the Carricillo. The northwest corner was at the foot of a red hill which is seen, or, more properly, discovered, through an opening between the Penasco and the Sonoita mountain, and the southeast corner was on the Jarilito, at the corner monument of the lands of the presidio of Santa Cruz. The cross or side monuments were also located and piles of stone placed "to mark the place for the monuments."

Any further time consumed in arguing as to the meaning of this language would seem to be misspent. When a plain idea is conveyed in plain words, all has been done that can be done. The plain idea in this case is that the officials went out to comply with the request of the petitioner to segregate from the public domain the quantity applied for and afterwards sold, and that they did so by establishing the center and the corner and other monuments "*of these sitios,*" thus identifying a tract of land which they called "four sitios," and that when the government had thus officially marked out the applicant's land on the ground, he immediately received possession of it, and conducted thereon his business of raising cattle. The delivery of the formal

title was a matter of so little importance that it was deferred for certainly as long as nine years.

In the brief filed by the undersigned in case No. 40, October term, 1901, of this court, there is quoted what is given below from the opinion of Justice Sluss, of the Court of Private Land Claims, in the case of Arivaca Land and Cattle Company *v.* U. S., now before this court on appeal, No. 153, October term, 1901. The views of that learned judge are the result of the study of these grants in the many cases which have come before the Court of Private Land Claims, and are so clear and full that we deem it not amiss to quote them again:

"First, as to the question of location:

"I take it that a grant has been located within the meaning of the provision of the treaty in question when it affects to convey a particular tract of land capable of identification to a reasonable certainty.

"Now, giving this titulo the most narrow construction possible, it plainly purposed to convey a tract of two sitios at a certain place, with a recital that the tract so conveyed is identified by boundaries which are evidenced by certain specified objects. By any fair construction, it purports on its face to convey the whole of the tract within these boundaries.

"It does not say that it was the conveyance of a right to select two sitios thereafter to be identified and located within the prescribed outboundaries. It purports to be the final act of the government—the investiture of a complete title to a specified tract, with no future act to be performed.

"The contention however is that inasmuch as the grant purports to be of only two sitios and the original sale, having been made in 1812, must have been a sale of a limited quantity, and the outboundaries mentioned in the grant containing in fact an area in excess of two sitios, it must be construed as a sale of a certain limited quantity to be thereafter selected within a larger tract and was necessarily in the nature of a float and not located within the meaning of the treaty.

"This contention demands consideration.

"The grant recites that the original sale was made in

1812; therefore it must have been made under section 81 of the Ordinance of the Intendants as modified by the royal order of February 14, 1805 (Reynolds, 68). This ordinance required, and it was the practice, that no more than four sitios could be sold to one person of wealth and no more than two to a poor person; that the lands should be surveyed and appraised and not be sold for less than the appraisement, and that the appraisement should not be less than certain fixed sums, regulated according to the character of the land.

"Having in view these provisions and the recitals in the grant document, it is a necessary inference that the original sale was for a certain quantity of land, at the place specified, which had been surveyed by officers duly authorized to make the survey and appraisement in pursuance of the royal order.

"The question is therefore presented squarely, do not the proceedings of the survey, appraisement, sale and conveyance operate as a location of the tract sold within the meaning of the treaty?

"In my judgment the proceedings do have that effect.

"The essential feature or object of the proceeding was the protection of the revenues to insure a fair value for the lands sold. To secure this end was the object of the appraisement. This was practically the only protection there was. The law fixed a minimum limit.

"Now, what is an appraisement, except an appraisement of a certain thing? How can a man appraise two sitios of land unless he knows what two sitios? How could the appraisers know what two sitios they were to appraise? Why, this was the very object of the survey, to mark out on the ground the tract to be appraised and sold.

"To survey a tract of land means to mark it on the ground, not in the air, nor on paper. The surveyor was an officer of the government delegated to mark on the ground the tract sought to be purchased. When the survey was completed appraisers were summoned and sworn to appraise the tract of land surveyed. They were not authorized to determine whether the survey was correct or not, or whether it contained a greater area than the quantity sought to be purchased. In fact, they were not supposed to know what area was contained within the boundaries, nor what quantity was petitioned for. The surveyor was authorized to fix

the boundaries and determine the quantity of land within these boundaries. The appraisers could not go 'behind the return' of the surveyor as to the area of the tract surveyed. That was their guide and they appraised that tract identified by the boundaries adopted by the surveyor as to the two sitios of land which was the quantity determined by the surveyors to be contained within the boundaries.

"By that survey and appraisement the land was offered for sale at public auction at the capital of the district many miles from the land, and all the world was invited to come and buy; so I may say that the only fair construction of the transaction is that by the intent of the parties the outboundaries established by the surveyor were the boundaries of the two sitios appraised and sold and evidenced the location of the tract sold.

"Presumptively, the survey was correctly made. The presumption of law is that an officer does his duty. Wherever the determination of any matter is committed to a public officer, the determination so made is binding until set aside in a proper proceeding. An error in the determination cannot be shown in a collateral way.

"No survey is ever perfectly accurate. Never were two surveys made precisely alike. They are pre-eminently matters about which different men reach different conclusions. If the survey were in fact erroneous, covering an excess of land over the quantity directed to be surveyed, such error would not render the survey or subsequent proceedings based thereon void as to such excess, but render it voidable only as to such excess.

"The error or mistake in the survey did not appear upon the face of the proceeding.

"Now, it is a principle universally recognized that an official proceeding, which is not void upon its face but voidable only by reason of some mistake or error in the course of the proceeding, is valid and binding until set aside, or annulled in a direct proceeding for that purpose.

"The Supreme Court in Graham *v.* U. S., 4 Wall., 59, and U. S. *v.* Pico, 5 Wall., 536, has clearly indicated that the proceedings of these officers in surveying and establishing the boundaries of tracts of land for purposes of segregation from the public domain are in the nature of a judicial proceeding and have all the force and effect of judicial determination binding upon the former government.

"By this it is not meant that they are *res judicata*, finally and conclusively binding. A mistake is always open to correction, but can only be corrected in a proper proceeding.

"The idea I seek to emphasize is well expressed in Smelting Co. *v.* Kemp, 104 U. S., on page 640:

"'The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of the title the law has made numerous provisions designating the persons who may acquire it and the terms of acquisition. That the provisions may be properly carried out, a Land Department as part of the administration and executive part of the government has been created to supervise all the various proceedings taken to obtain the title, from their commencement to their close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration, and to pass upon its competency, credibility and weight. In that respect they exercise a judicial function, and therefore it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to notice in a collateral proceeding. Their judgment in such cases is, like that of other special tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction or annulment.'

"The views thus expressed are equally applicable to the proceedings of Spanish and Mexican officials in the disposition of the public domain. They are not merely an exposition of a peculiar rule of American law, but the expression of hard, common human sense applicable the world round.

"My conclusion, therefore, is that the proceedings of the survey operate as a determination that the boundaries of the two sitios are the landmarks specified in the report of the survey, and that this determination remains true and binding until set aside in a proceeding for that purpose.

"Such, it seems to me, was the view of the matter taken by both Spain and Mexico as shown by the practice of those governments. By a proceeding of denouncement and composition, lands within these surveyed outboundaries could be surveyed, and if an excess were found it could be appraised and sold; but I think I can safely say that there

was no other way in which the excess could be reached until denouncement was made and a determination was had of the question of an excess—that is to say, until the original survey was directly proceeded against and determined to be erroneous, the purchaser under the original proceedings held the possession and dominion of the entire tract by its surveyed outboundaries against all the world. By the original proceeding the entire tract was segregated from the public domain and remained segregated until by a proceeding, under a denouncement for that purpose, the excess, or demasias, was established or adjudged to exist and as such subject to sale. Until that occurred, there was no excess or demasias."

Mistakes in surveys were not confined to Mexico, nor is the position which we are here advocating a new one. On the contrary, it was announced by Chief Justice Marshall at an early day and has always been followed. The case of Taylor *v.* Brown, 5 Cranch, 234, was one where under a warrant for 2,000 acres, 3,025 acres had been surveyed. In delivering the opinion of the court Chief Justice Marshall said, as we have quoted in other briefs:

"The warrant, it is said, was an authority to survey only 2,000 acres, and, for the surplus, the survey was made without authority.

"It is a fact of universal notoriety in Virginia not only that the old military surveys but that the old patents of that country generally contain a greater quantity of land than the patents call for. The ancient law of Virginia notices this fact, and provides for the case. It prescribes the manner in which this surplus may be acquired by other persons, and it is worthy of notice that the patentee must himself reject the surplus before it can be acquired by another, and, after having so rejected it, he has the election to allot it in such part of the patent as he pleases.

"The survey is an appropriation of a certain quantity of land by metes and bounds, plainly marked by an officer appointed by the government for that purpose, and it would seem that the government receives his plat and certificate as full evidence of the correctness of the survey. This being the case, it is admitted by the government to be

an appropriation of the land it covers, and it is difficult to discern a rule by which the survey could be reduced on a caveat by the owner of an interfering survey unless the entry on which it was made was in such terms that the excess might be considered as surveyed contrary to location. For to every and to each part of the land surveyed, its owner has an equal right. * * *

"It is proper to premise that there is but one species of cases in which any court of justice is authorized by our land law to divest the owner of a survey of the surplus included within its boundaries, namely, when the survey was made posterior to an entry made by another person on the same land; and to do more would be unequal and unjust, inasmuch as a survey which is too small cannot be enlarged."

The case of Taylor *v.* Brown was cited and followed in the early California case of Vanderslice *v.* Hanks, 3 Cal., 28, where the court showed that even where the grant provided for a measurement and reservation of surplus "it was a grant of title to the whole, with a defeasance as to the surplus." The court said that "until the proper proceeding is adopted to restore the surplus to the public domain 'to every and to each part of the land granted, its owner has an equal right.'"

It is not believed that this reasoning of Chief Justice Marshall can be criticised in any respect, and we take it as a proposition that cannot be controverted that in every one of these Sonora grants the legal title and ownership of the whole of the tract which had been surveyed passed to the purchaser by virtue of the original title papers, though by mistake more land was included than was paid for.

But, even conceding that this grant conveyed title to the whole of the tract surveyed, a point may be urged substantially as follows: The Mexican officials should have accurately measured or estimated 200 cords from the center point in each direction. It must be assumed that the grant was made on the supposition that such measurements were accurate. A later survey shows, however, that they were

not, and the tract of land said to be 400 cords on a side is in reality of a greater area, and the question then arises, Should this error due to inaccurate measurements be corrected; and, if so, can it be done now, and in what manner?.

The court said in Ely's Admr. *v.* U. S., *supra*, referring to the inaccuracy of measurements: "If the outboundaries disclose a square or any rectangular figure, the excess of area suggests simply a carelessness of measurements, and can be corrected by a proportionate reduction in each direction."

If that rule were to be followed in this case, the grant would be confirmed for a tract of land measured 200 cords accurately in each direction from the center point, thus giving a tract of land 400 cords on each side and no more.

But in the Ely case the court added, "We do not mean to anticipate all the questions which may arise." We believe that in the present case the facts show that such rule cannot justly be applied, and there is also in this case the important question of law, which was not in the Ely case, of the right of the grantees to pay for the surplus. Both under the facts and the law, this case is distinguishable from the Ely and other cases.

In the Ely case the land granted consisted of a narrow canyon, through which ran a stream, with some agricultural land on each side, beyond which were broken and barren hills. The value of the grant lay in the water, and each sitio was appraised at sixty dollars because it had running water and some pieces of land fit for cultivation. If, as this court ruled, the measurements from the central point in the grant in that case were shortened so as to be accurate, the grant still remains substantially the same as before, and practically as valuable for raising stock, because the corrections of the measurements will not deprive the grantee of the running water; and this is true as to the other grants passed on by this court.

But if such rule were to be applied in the present case, it would leave out most of the running water and would

make a tract of land of an essentially different quality—one useless for stock-raising, and one which, instead of bringing the high price which the record discloses, could not have been sold at any price, because it would have been unsuitable for the purpose contemplated. As this grant was actually surveyed and sold, it included the large and valuable spring at the northeast corner and the running streams comprised within the three squares or quarters which were said to contain permanent running water. The eastern boundary began at the point of the Sierra del Cobre mountains, and the western boundary was the Plomosa mountain chain, and with the running water contained in this tract and possession of the whole of the tract, cattle could be raised to advantage.

But if the grant is restricted either to 100 cords in each direction from the center or even to 200 cords in each direction, the result will be that neither tract of land will contain the El Carricillo spring, nor will either contain three sitios or squares with permanent running water. The land sold, it must be especially noted, was designated and identified with reference to its quality as well as the quantity, and a grant of a tract of land of a different and inferior quality—one not possessing the important and, in fact, indispensable feature of containing permanent water—would not be such a grant as the parties contemplated. If either 100 cords or 200 cords had been measured accurately from the central point, outside the limits of either one of such tracts, there would have been a large amount of public land which would contain the permanent running water spoken of in this grant, and if the cattle of other persons had been put on this public land, it would have been impossible either to keep the cattle on this public land from trespassing on the grant, or the cattle of the purchasers from straying outside of the boundaries of the grant, as thus measured. Wire fences were not known in that day, nor could they have been used to advantage, because the habits of cattle on the

open range are at certain times to be in the valley and at other times in the mountains, and any interference with their movements would not be profitable.

It was essential that the purchasers should do what the testimony shows they did do, viz., to buy and occupy all the land between the four corners of the survey. The old settlers still remaining in the town of Santa Cruz south of this grant and who knew the original purchasers, and have always known where the monuments were placed, and how the land was occupied, so testified (rec., p. 208). The practical construction given to this sale by the parties at the time they took possession is of the highest value, and there is a most significant fact, to which we have adverted, that the well was dug in the southwest square or quarter beyond the limits of four leagues (40,000 cordeles). There is on this quarter the place known as La Noria, or "the well," at which place the purchasers of the grant had erected corrals for their cattle (rec., p. 209). On the tract of land included within the original monument they maintained from 2,000 to 20,000 head of cattle, whereas a tract of land 100 cords in each direction from the center would not support more than 400 head (rec., p. 161).

The price which was paid for this land is a fact to be considered. The record in the Sonoita grant shows that one and three-quarter sitios containing running water were appraised and sold at $60 for each sitio. That grant is immediately to the northwest of the San Rafael grant, and was made within a few days of it. The San Rafael del Valle grant, a short distance only from this one, contained four sitios, each with running water, and was appraised and sold at $60 for each sitio, or $240. The Babacomari grant, immediately to the north of this one, contained six sitios with running water, appraised at $60 each, and two arid sitios, appraised at $10 each, $380 in all, and was sold for this sum. The Canoa grant was appraised at $120 for four sitios and was sold for $250.

With this evidence of the prices paid at the time for similar land, can it be supposed that if this grant contained only four sitios (40,000 cordeles) it would have brought the unprecedented price of $1,200? Would eight sitios in the Babacomari, six watered, bring only $380, and four sitios in this grant, three watered, bring $1,200? The three sitios containing running water herein were appraised at $60 each and the remaining one at $30—$210 for the four, or an average of $52.50 each; but they sold for $1,200, an average of $300 each, and, on the four-league theory of this grant, five times as much as similar lands in the immediate neighborhood sold for at the time.

The high price can be explained only by understanding that this grant was known to be different from the grants of four sitios (40,000 cordeles), and that it brought the high price because each quarter was termed a sitio. In this view of the case, the price paid was an average of $75 per sitio (of 10,000 cordeles), which was reasonable, while the price of $300 per sitio (of 10,000 cordeles) is absolutely inexplicable, especially in view of the fact that the applicant stated at the outset that the land bordered on the country of the Apaches, who were constantly hostile, and for this reason was not especially desirable; certainly not more than other lands of the same character.

The remedy which the Mexican laws provided in cases of excess was not a curtailment of the land, but was an additional payment for the excess at the prices that governed when the land was sold. It was never the case, so far as any law or practice has been found, that any part of the land was taken from the purchaser, provided he wished to retain the excess by paying for it.

Articles 1 and 2 of the law of Sonora of May 12, 1835, are as follows:

"ART. 1. Those who have acquired property in lands of the State by lawful title are owners in good faith, even when they have lost that document, for they are entitled to re-

validate it upon proof of the incident that may have occurred.

"ART. 2. Those are likewise *bona fide* owners who under the descriptions given in their records of survey occupy some excess of land; and they are entitled to such excess, even after such excess is shown, without any other requirement than that of paying for the excess in accordance with the quality of the land and the price which prevailed when the land was measured and appraised; and only in case the owner does not want the excess, or when such excess is very great in the opinion of the government upon the report of the treasurer, shall such excess be awarded to any one denouncing or soliciting it; and such persons shall bear the expense of the resurvey, if the excess has not been ascertained. In lands measured by calculation (graduacion) none shall be regarded as excess that does not exceed half a sitio."

As we said in the brief in case No. 40, October term, 1901, the whole body of the Mexican law as to demasias is absolutely founded on the principle that the original grantee had the unqualified right to make a further payment and retain the surplus whenever the same might be ascertained. The law of July 22, 1863 (Hall's Mexican Law, pp. 173, 175), shows (art. 5) that the possessor had the right to retain the public land "if he had possession for ten years or a title translative of dominion." In order to determine the extent possessed, "it shall be (art. 6) within the limits mentioned in the title, even when they are not in conformity with the amount of land." "In the two preceding articles is comprehended the public land confounded in its totality with the fields which are not sold, or comprehended within them" (art. 7).

Article 8 provides that where the lands are denounced by a third person the original grantee "will concede the land to the denouncer, or pay him its value according to the tariff price in cash down."

We submit that this is of the greatest weight as showing that in every case the remedy for the excess was by a further

payment and not by taking from the original purchaser any portion of the land if he cared to retain it.

We further cited in that brief the many instances from the records at Hermosillo showing that the subject of demasias was continually acted on down to and after the treaty. This was done for the purpose of showing that the law of Sonora of May 12, 1835, continued in force. In Ainsa *v.* U. S., 161 U. S., 208–226, *supra*, there is the statement from the Mexican attorney general under date of December 5, 1842, six years after the constitution of 1836, specifically referring to "the provisions of the last clause of article 2 of decree No. 51 of the 12th of May, 1835, of the old State, and which is still in force."

As a matter of course, no question of excess could arise until there was a second survey or examination revealing the excess. There had been no second survey of this San Rafael grant at the time of the treaty. No one knew that it contained any excess. There was no obligation on the part of the purchasers to cause it to be resurveyed, nor was there any law providing that any government officer should make a resurvey. The grantees were justified in relying on the formal statement of the government officials that the tract contained four sitios, and on the official declaration of the Intendente that the proceedings of "measurement, appraisement and sale" of the four leagues "were in all respects regular and sufficient." They could wait till the excess was shown and then they were "entitled" to such excess "without any other requirement than that of paying for the excess in accordance with the quality of the land and the price which prevailed when the land was measured and appraised."

It will not do to argue that the power to acquire the demasias was only a privilege. The grantee was said to be "entitled" to them on payment therefor. This is the same word which is used in the first article of the law, providing that owners who have lost their title papers are "entitled"

to revalidate it, and in the report made in 1885 by the Minister of Public Works of Mexico to the Chamber of Deputies and the Mexican Congress, referring to overplus or demasias, he speaks of the "right" given to owners by the law of July 22, 1863, in its 5th and 6th articles. The full text of the paragraph in which it occurs is as follows:

"In order to carry on the investigation of said overplus (*demasias*), it is necessary to comply with all the provisions of said laws of July 22, 1863, and of the 15th of December, 1883, following the judicial procedure provided in the same. Consequently, no kind of abuses can be permitted, there being, therefore, no cause for the alarm among owners which has been spoken of on the floor of that Chamber. It is possible, nevertheless that some owners have become alarmed, but they are, without any doubt, those who are occupying lands and are ill-disposed to make use of the right given them by the law of July 22, 1863, in its 5th and 6th articles; or because they erroneously interpret the investigation by the companies which are acting in the representation of the government, for those who possess land in good faith, on the contrary, have seen, in the measures of the Executive, the lawful and honorable manner of legalizing their properties, avoiding conflicts for the future, and giving their lands a real value, which their properties could not have when their titles were doubtful. These assertions are duly proved by the petitions presented to the Department of Public Works by various owners, in which they themselves voluntarily denounce the overplus (*demasias*) which they have been possessing, and ask to enter into agreement with the government."

It would certainly be good ground for alarm if the owner of a tract of land, which he had bought and possessed in good faith under an official survey of the government, were told that it was to be curtailed so that what was left to him would be radically different from the tract which he had bought. The law of Mexico contemplated no such injustice. The "lawful and honorable manner" of rectifying the mistakes in the original surveys was by permitting the purchasers to pay for and retain the overplus.

"A right of any validity before the treaty was equally valid afterwards. The act recognizes a like legal and equitable right, and should be administered in a large and liberal spirit."

U. S. *v.* Moreno, 1 Wall., 400–405.

"The word *property* includes every species of title, inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government was not changed. The new government takes the place of that which has passed away."

Hornsby *v.* U. S., 10 Wall., 224.

If our government claims to own the surplus because the Mexican government would have owned it if it had been discovered at the time of the treaty, this government takes it subject to the right of the grantee to retain it on payment therefor. The record shows that tender was made of an amount which would cover the whole of the surplus.

To put the contention on this point in a few words, we claim that if the surplus had been discovered before the treaty the grantees would have been entitled to it on payment therefor, and that this was a right or property which they have under our government as fully as under the Mexican government, and that it should be recognized in this case. This court has unrestricted jurisdiction by section 7 of the act of 1891, "to hear and determine all other questions properly arising between the claimants or other parties in the case and the United States," and this question of demasias is one actually and properly arising.

The foregoing has been an attempt to maintain three propositions, substantially as follows:

1. The legal title and ownership of the whole of the tract surveyed passed to the grantees by virtue of the original title papers, though by mistake more land was included than was paid for.

2. The right to remain in the ownership of any surplus that might afterwards be ascertained—which right was conditioned only on a further payment—was property protected by the treaty.

3. This court has power to recognize and enforce such rights by virtue of the further payments or tenders by the grant claimants.

LOCATION OF THE MONUMENTS IN THIS GRANT.

Some further objections raised by the government we shall now attempt to meet. As they seem of a minor character, they have been deferred to the last.

In this as in the other cases, the government witnesses have attempted to throw doubt over the location of the calls of the grant. The language of the title papers herein in describing the details of the survey, and of the natural objects called for, is singularly clear. Starting at the central point, there is no confusion on the face of the papers as to how the lines should be run or where they terminate. This grant is, perhaps, as clear in the description of the survey as any that ever has or ever will come before the court. It is fully complete, because not only are the lines run from the central point in the various directions, but the tract is squared—that is to say, the exterior lines are run also. The government, however, endeavors to throw confusion over the location of several of the monuments, chiefly of the ones on the northern line.

We respectfully suggest that it would be very strange if these Mexican officials did not describe the calls with such precision that it would be not only possible to find them, but impossible not to find them. The grantees and their various associates and employés in conducting the cattle-raising business were generally unlettered men. They had to trust not so much to books or title papers as to the conspicuous

points in the topography of the country. Their ideas of distances were of the vaguest, but their eyes were keen for what pertained to their immediate business. They knew and remembered the brands of cattle and they particularly well knew the topography of the country—where the water and passes in the mountains were, the names of the mountain ranges, and the designations of conspicuous natural objects. It would be very strange, therefore, if they should in this title paper or any other describe natural objects in a confused manner. When they speak of a spring and call it El Caracillo and say that the monument is beyond or to the east of it, at the point of the Sierra del Cobre, it may well be presumed that there was at that time a spring known by that name, and that there was beyond it a mountain range or sierra, and that this mountain range came to a point, and that a monument was put there just as described, and it would be highly improbable that anywhere else on or near the tract of land there should be another such spring and another such sierra coming to a point beyond the spring, so that it would be doubtful which one was meant.

The location of the north center monument is particularly described, and the northwest monument is located and described with reference to the north center monument. The location of these two monuments would make it certain that the northeast monument was approximately due east of the north center. The north center was said to be "on a mesa on the edge of a creek which runs towards the peñasco at the foot of an oak tree," and the northwest was at the foot of a red hill which is seen, or discovered, from the north center through an opening between the peñasco and the Sonoita mountains. The witnesses for the grant claimants fully identified the north center and the northwest, as well as the other monuments; but what seems more than strange in this case is that although the government witnesses were attempting to throw confusion over the location of the monuments of the grant, they did not go to the north center monument,

the location of which is the point mainly in controversy. Mr. Tipton testified on cross-examination as follows (rec. pp. 369, 370, 371):

"Q. You did not go up to the north center monument of the grant, did you? A. No, sir.

"Q. Why not? A. I was not told to go there. I do not know where such a place is, except as indicated by a map that he had.

"Q. Who was with you? A. Mr. Pope, assistant U. S. attorney for this court; Mr. Flipper, and a couple of men who were employed to drive."

It is to be regretted that the government witnesses did not go to this north center monument, because, as testified to by the witnesses who did go there, it exactly answers the calls of the expediente. If the government witnesses had gone to it and had corroborated the claimant's witnesses, it would have removed any supposed doubt as to the location of the northern monuments. If they had gone to the point taken by the claimants as the north center and had found that it did not answer the calls of the title paper, this certainly would have strengthened the government's case. Why did they not make a full investigation as to these monuments, and thus testify as to the whole truth? It would seem that this would have been a natural and straightforward course. In considering and deciding on these questions of fact the court would like testimony as to facts, but the government avoided testifying as to the facts concerning this north center and northwest monuments and offered instead a great amount of argument and reasoning based on theories.

The tract surveyed, as disclosed in the record in this case, was not an isolated tract. It was a square, the southern line of which was the northern line of the presidio of Santa Cruz to the south. The tract is therefore unmistakably located as to the southern line. The northwest corner monument of the presidio of Santa Cruz and its north center

and northeast monuments, the three establishing the northern boundary of the presidio, do not seem open to any doubt under the evidence. These monuments have long been established and were matters of public notoriety. The northwest monument of the presidio of Santa Cruz is on one of the two little hills beyond (or south of) the San Antonio pass, and this monument is expressly said to be a "corner monument *of these sitios*" sold in the San Rafael grant.

The east center monument was not seriously controverted, and the west center is absolutely unmistakable, because it is the only high limy peak in the range of mountains to the west. There is nothing like it, nor anything which could be taken for it.

The northwest monument is identified so peculiarly by the topography of the country that it is not possible to confuse or mistake it.

The witness Bonillas testified as to the red mountain or hill which can be discovered from the north center monument in an opening between the peñasco and the hills of Sonoita, and gave the following full description (rec., p. 104):

"Q. Now from this north center monument, can you observe any red hill in the direction of the peñasco, about which you have been testifying? A. It is a very singular fact that just about where the north center monument is, you can observe through an opening formed by a cañon of this very wash, of which the title speaks, running towards the west, a high chain of limestone hills, to the right or towards the north, looking from the north center monument to the west, and they end abruptly into this cañon; also, high hills coming down from the same cañon from the south, there is an opening through which you can see this red mountain in the distance, and that is all along the south like looking through a funnel, just like looking through a narrow, and that is all the description given in the title papers.

"Q. From the north center monument can you discover this red mountain through an opening, or at an opening, or

at the place mentioned in looking towards the peñasco? A. Yes, sir. It seems to be in an open place beyond these hills or ridge; there are other hills in the direction of the west.

"Q. Did you see a rock which answers the description of the peñasco like the photographs in evidence? A. Yes, sir. It seems to be very well known by that name.

"Q. And north, beyond and through that same arroyo running to the peñasco, you can see a red mountain? A. Yes, sir.

"Q. And only one? A. I think it is the only red mountain which you can see.

"Q. And this red mountain appears to be in an open place? A. Yes, sir.

"Q. Now describe that red mountain, and state whether or not there is anything in that direction which could be taken as a red mountain, or any other landmark? A. Standing at the north center this red mountain is at the end of the chain known as the Plomosa range of mountains—also known at the present time as the Patagonia mountains, I believe; it is the northern extremity. The red oxide of iron gives it a red appearance. This oxide of iron is very abundant on this mountain.

"Q. How does it compare in size with the other mountains around it? A. I think it is the highest mountain in that neighborhood.

"Q. From what direction can you see that red mountain? A. You can see it from all four cardinal points of the compass."

The witness Cameron testified as to the northwest corner as follows (rec., p. 163):

"Q. In looking towards the peñasco, can you see from the vicinity of the north center monument any other natural object that is called for in the grant, title papers? A. Yes, sir.

"Q. What? A. A red mountain.

"Q. Describe how you see that from there? A. Well, this arroyo or cañon cuts the Canelo hills in two as it were, also some of them look fast to each other; still there is an open space through which you can see this red hill.

"Q. What is the appearance of the red hill as to whether

it is connected with the other hills or not? A. It stands in the open.

"Q. Do you know where the Sonoita hills are? A. Yes, sir.

"Q. Where are they in looking from the north center monument? A. Towards the red hill just further north."

As to the north center monument and the northwest monument, the witness further testified (pp. 186, 187):

"Q. How did you first come to find it (the north center monument)? A. I hunted for it for months for a long time, many many days, looking for a point that would answer the description in the title papers and we could not find it; we finally sent for Mr. R. C. Hopkins, who used to be connected with the Surveyor General's office in this Territory.

"Q. Was he then connected with the Surveyor General's office? A. I think not; I think we sent to—he was living in San Francisco, and we wrote to him to come down; we drove him around over the grant with the title papers, and had some different people with me, and finally I took him over to the northeast corner, and in reading it he said, that it ought to be some point where this red hill could be seen through the ridge of mountains, seen through an open in the mountains which was to be discovered in a clear place; and when he told that, one of the men said, that I can immediately take you to a point. I know where there is a point which you can see through; I can take you to that point. We, of course, told him to do so, and he immediately took us around where the north center of the grant is located, and we looked through the hills and we discovered this red mountain, and discovered that arroyo that leaves this north center monument that runs in the direction of the peñasco, and it was so plain to our minds that that was the locality intended and called for, that we immediately knew it and have never had any reason to change our minds.

"Q. Did you find any monument or oak tree on the bank of the arroyo? A. We found the oak, very large oak trees.

"Q. The same stones and the same tree as shown in this photograph, now here in evidence? A. Yes, sir; the same tree and the same stones."

The witness testified (rec., p. 165):

"Q. Have you examined the country from the center monument as taken by Mr. Bonillas, to the northwest corner of the grant, sufficiently to be able to state whether there is any other red hill that will answer the calls of this monument, these title papers? A. I have.

"Q. Is there any other red hill? A. None other than the one at the northwest corner of the grant."

The effort of the government was to locate this northwest red hill to the east of the mountain range in which San Antonio pass and the mountain southwest of El Caloso are situated. According to the theory suggested by the government at the trial, the western boundary of this grant would run north from San Antonio pass to El Caloso, and then branch off northeasterly to some hill near Harshaw; but this contradicts the plain language of the title papers, which show that the northwest monument, the west center monument, and the southwest monument are in the same line, and the northwest monument can be established, in addition to the proof of the calls in their direct order, by reversing the call for the west side of the tract of land surveyed. The southwest corner monument of the sitios was arrived at by estimating from the northwest corner "400 cords toward the south upon the Sierra de la Plomosa to a point beyond the pass of San Antonio, where there are two small mountains which designate the corner on the side of the west of the common lands of the presidio of Santa Cruz." This northwest monument of the Santa Cruz land is unmistakably located on the very summit of one of these small mountains. As a matter of course, therefore, the northwest monument of the San Rafael grant should be found in a line with this monument of San Antonio pass, which line runs along the summit of the mountain range, over the top of the high mountain almost southwest of the hill called El Caloso, and terminates at the north at the foot of the red mountain. As the western boundary line beyond controversy runs along

the summit of the mountain range from San Antonio pass to the mountain southwest of El Caloso, it must be continued in a direct line north along the summit of the mountain range, terminating at the foot of a red mountain. The western line, as surveyed by Bonillas and Roskruge, completely answers this call; but there is not a word in the title warranting the government in putting the northwest corner monument on a foot-hill to the east of the Sierra de la Plomosa and entirely out of line with the southwest and west center monuments, which points are on the apex of the mountain range.

As to the northeast corner, the witness testified as plainly (rec., p. 165):

"Q. Is there any spring in the country anywhere from the center monument towards the northeast that will answer the call of the title papers as Carricillo spring, than the one taken as the El Carricillo? A. None."

This monument beyond this spring is located at or near "the point of the Sierra del Cobre," and the range of mountains to the east of this grant terminates at the point where this monument is. The court knows that a "sierra" is a mountain range and not a spur or foot-hill, and any attempt to locate a spring at any point or spur of the Huachuca or del Cobre mountains would not answer the call, which is for the point of the sierra.

The witness called by the government, Gavino Arriga, testified (p. 335) as follows:

"Q. All the people of Santa Cruz called that spring up there at Igo's El Carricito, do they not? A. Yes, sir. All the old people that I know; I know some of the old people who settled Santa Cruz."

The difference between the word "caracito" and the word "carricillo" is that the first means a small reed and the second means a larger reed of the same kind. That the spring thus taken by claimants at the northeast corner is

the one referred to in the survey seems to be established beyond room for serious controversy.

As showing the ignorance of the Mexican people as to points of the compass, etc., it is of interest to note what this witness says (rec., p. 336): "I do not know what northwest is; I know all the mountains standing on one side or the other of the mountains; I can give you the places; I do not know northeast or northwest."

But this witness did know the practical construction given by the original grantees to the extent of this grant, because he testifies (p. 335), that in 1887 or prior thereto the people of Santa Cruz including himself had made leases to certain mines at Harshaw, which place is outside the limits either of 100 cords from the center monument or of a tract 200 cords in each direction from the center monument.

To this we call the attention of the court in connection with the other testimony as to the fact that the grantees took possession of all the land within the corner monuments, claiming title to all of it, and exercising acts of ownership up to the boundaries. In endeavoring to arrive at what was the intent and understanding of the parties at the time, we submit that the evidence is consistent and overwhelming that all parties understood that it was the tract of land as surveyed which was sold.

RECORD OF THE GRANT.

There was produced at the trial of this case the original titulo, which was not questioned in any way by the government, and also a certified copy of the expediente, or matrix, which is now among the records at Hermosillo, Mexico. There was produced also the document heretofore quoted (p. 532), dated January 16, 1831, which refers to the sale of these lands on January 10, 1822, and requests the purchaser Romero to call and take the title to same, which was then in the possession of Mendoza, the Treasurer General. There

is also the letter, on page 533, to the Treasurer General, in which the purchasers of the grant refer to the fact that they have always endeavored to settle and occupy the lands in spite of the incursions of the enemies.

This seems to be the strongest proof of the genuineness and recognition of this sale. But, in addition, the title paper contains the following memorandum at the conclusion: "Entry of this title is made at folio 3, of Book No. 2, that exists in this Commisariat General." It was the custom to issue the final title paper and make a record thereof in the book of Toma de Razon and to note at the bottom of the paper that such entry had been made, referring to the book and page. The Sonoita grant passed on in Ely's Adm'r *v.* U. S., *supra*, final title to which was issued on the same day as this San Rafael grant, contains a similar notation that "note of this title is taken on page 3 of Book No. 2 in this general commisariat." Similar memoranda are appended to all the title papers which have come before the court.

Under the doctrine laid down by this court in Applegate *v.* Lexington & Carter County Mining Company, 117 U. S., 250, and Stebbins *v.* Duncan, 108 U. S., 32, 50, the memorandum annexed to the titulo in this case is the usual record evidence, competent and conclusive, that the grant had been recorded as therein stated. It will be presumed, unless the contrary is shown, that a public officer acted in accordance with the law and his instructions, and that all things were properly done.

The book of records number 2 in which the Sonoita and this San Rafael grant were recorded has been lost. Mr. Tipton, the government expert, testifies, pp. 91, 92, and 233, 234, of the record herein, that there are only two books of Toma de Razon in the records at Hermosillo. One is a small book which consisted of 12 leaves at the time witness first saw it, five of which contained writing and five of which were blank. On the first page of the first leaf it had the number "1" on it. The date of the last entry in this

Book No. 1 was May 13, 1825, and the first entry in the other book was some time in 1831.

Book No. 2, in which this grant is said to have been recorded, has been lost. Evidently a considerable number of titles were issued on the same day as this San Rafael grant, and these were put in Book No. 2, following Book No. 1, the last entry in which is, as just stated, May 13, 1825. It will thus be seen that this grant does not pretend to be recorded in either of the books now in existence.

As to the record of this grant, it is fuller even than the Sonoita grant above referred to, in which case the government did not see fit to raise the question of the recording of the grant, and possibly it will not do so herein, and the above is set out only because some of the justices of the lower court overlooked the fact that the testimony is that Book No. 2 has been lost, and also the fact that there is on all these grants a memorandum that they had been recorded.

Respectfully submitted that the decision of the lower court should be reversed and a decree entered confirming this grant for all of the land within the monuments.

ROCHESTER FORD,
Of Counsel for Claimants.

No. 109 & 132

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Jan. 27, 1902.

THE UNITED STATES, *Appellant*,
v.
A. A. GRIMES ET AL. } No. 109.

CHRISTIE ET AL., *Appellants*,
v.
THE UNITED STATES. } No. 132.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF AND ARGUMENT.

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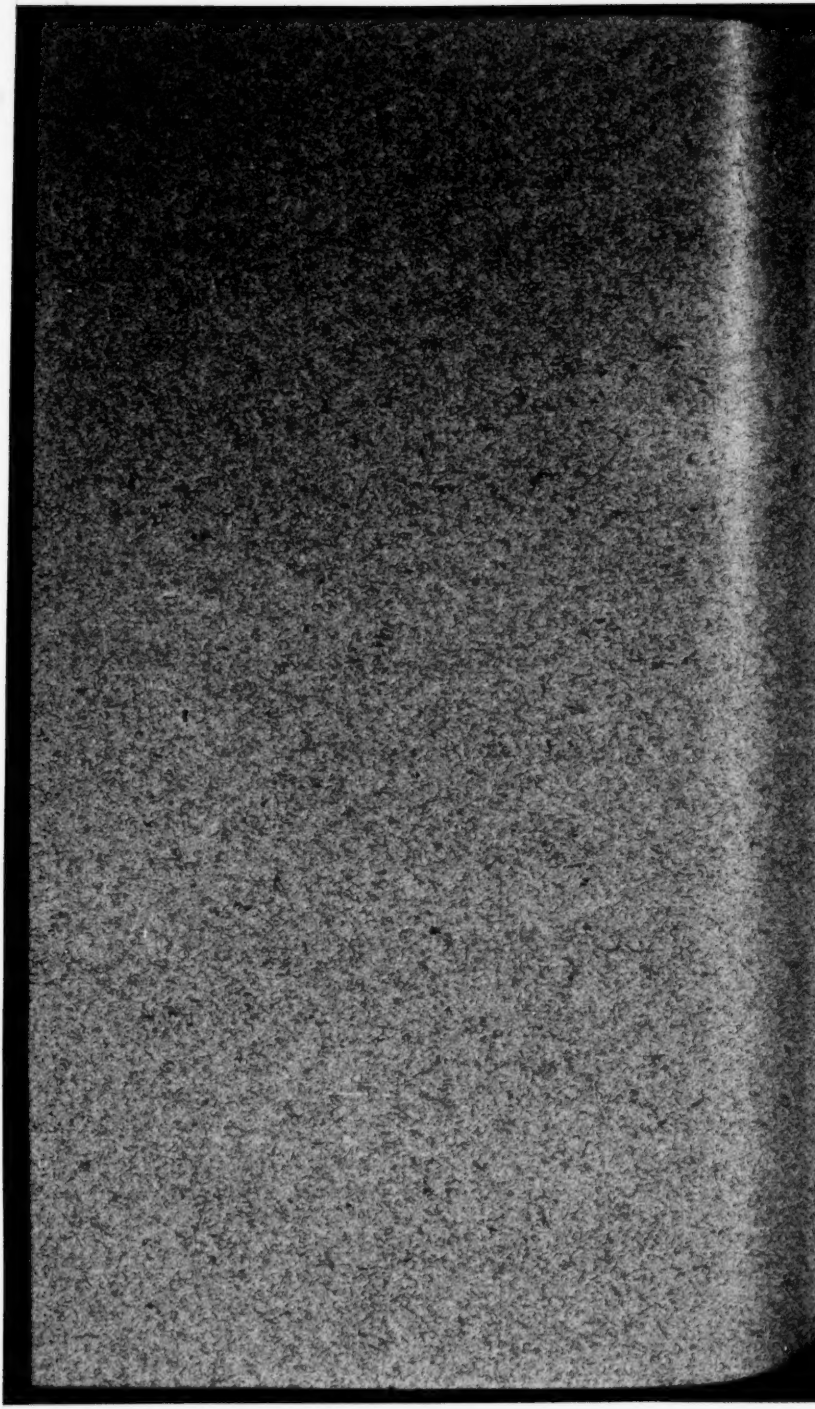

Supreme Court of the United States,

OCTOBER TERM, 1901.

THE UNITED STATES, *Appellant*, *v.* A. A. GREEN ET AL. } No. 109.

CHRISTIE ET AL., *Appellants*, *v.* THE UNITED STATES. } No. 129.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

Statement of the Case.

This case involves the ownership, as against the United States, of a tract of land in Arizona, to which the claimants derive title under a Mexican grant made in the year 1825 to Ramon Romero and other citizens of the Presidio of Santa Cruz, in the State of Sonora.

The original application for the grant was made by Don Manuel Bustillo on July 19, 1821. In pursuance of his petition, the lands were surveyed by the Government surveyors, appraised, offered at auction the required number of times, and struck off and sold to Romero and other citizens of Santa Cruz for $1,200. The appraised price of the lands was $210.

When the survey was completed, and the description written out, it was signed by the Government Commis-

sioner, and Bustillo signified his acceptance of the survey by likewise signing the description. Thereupon, in pursuance of Mexican law and custom, he was inducted into the possession of the lands, and continued to hold the same until they were subsequently sold to Romero, to whom, as required by law, Bustillo transferred possession.

Bustillo, Romero and his coparceners, and other grantees, remained in undisputed possession of the whole tract until the cession of the territory of Arizona by Mexico to the United States. The claimants are *bona fide* purchasers of the title derived from Romero and the other citizens of Santa Cruz.

The survey and description copied from the expediente runs as follows:

Being at the central point, as fixed by the denouncer, which point is named San Rafael. * * * * * * The measurement was commenced, the line being run towards the north, in which direction were measured two hundred cords, which terminated on a mesa on the bank of an arroyo which runs towards the penasco, at the foot of an oak tree, upon which was made a cross, and at the trunk of which a large pile of stones was placed as a sign for a monument. Returning to the center, there were measured two hundred cords towards the south, which terminated at the mouth of the Canada of the Potrero, at the same point at which is found the monument of the common lands of this presidio on the side of the north. Returning to the center, there were measured and counted, towards the east, two hundred cords, which terminated beyond the said Canada of the Potrero on a contiguous mesa, where a large pile of stones was placed as a sign for a monument; and returning to the center, there was measured and counted, towards the west, one hundred and thirty-three cords, for the reason that the sixty-seven cords required to make the two hundred cords could not be measured on account of the roughness of the tract of land; these were, therefore, estimated, the estimated line terminating on a high mountain situated in the range of the Sierra de la Plomosa, almost

southwest of the hill called "El Caloso," the summit of which was taken to designate a monument, and returning from the center to the pla e at which the two hundred cords terminated on the north, from which monument we estimated, on account of the roughness of the tract of land, two hundred cords towards the east, which terminated beyond a spring known as "El Carricillo," at the point of the Sierra del Cobre (copper mountain), at which point a corner mounment is to be placed. In the same manner two hundred cords were estimated, on account of the roughness of the tract of land, towards the west to the foot of a Red Mountain, which was designated as a landmark, which mountain stands in an open place between the Penasco and the mountains of Sonoyta; from this point *four hundred cords* were estimated, towards the south, upon the Sierra de la Plomosa to a point beyond the pass of San Antonio, where there are two small mountains which designate the corner on the side of the west of the common lands of this presidio, and which point is to serve *as a corner monument of these sitios;* from this point there were measured and counted two hundred cords towards the east, the line terminating at the monument on the northern boundary of the said common lands (of the presidio), which is found at the mouth of the Canada of the Potrero, from which point, continuing the square, there were measured two hundred cords towards the east, which terminated on the Jaralito, at the corner monument of the said lands of the presidio, from which point *four hundred cords* were estimated towards the north, on account of the roughness of the tract of land, which ended beyond the spring "El Carrisillo," with which measurements was formed the square of the four sitios registered by Don Manuel Bustillo for raising cattle, *and as such he accepted them*, being informed that in due time he was to establish his boundaries with monuments of lime and rough stone, as required by law.

The Court of Private Land Claims decided that the claimants were entitled to have the grant confirmed to the extent of an area of four sitios, to be measured in a square from the centre established by the Mexican surveyor who made the original survey—that is to say,

starting from the central point and running 100 cords to each wind, or north, south, east and west, and comprising a tract 200 cords square—and denied the title of the claimants to all other lands for which they contended.

This argument is intended to be supplemental to and in amplification of the briefs filed by my associates, Mr. Ford and Mr. Heney; the points stated therein are respectfully referred to, and it is desired that they shall be considered as specifically adopted and urged by me.

I.

THE MEXICAN GOVERNMENT SOLD AND GRANTED A TRACT OF LAND AS SURVEYED.

THE COURT OF PRIVATE LAND CLAIMS HAS DECREED THAT THE CLAIMANT SHALL HAVE A TRACT *to be* SURVEYED.

The tract *to be* surveyed is not the tract which *was* surveyed and granted.

It is only a minor part of it.

The Government contends that the whole proceedings of the Mexican authorities in surveying; selling and granting these lands, shall be reformed, so that not a single line of the survey, not a corner of the tract, not a monument erected under the Mexican proceedings, shall have any judicial recognition or be accorded any effect or significance whatever in this final inquest of property.

Not only is the actual record of the proceedings by which title was acquired to be disregarded and set at naught, but the character of the lands appraised, the price at which they were sold, the fact of possession,

their adjacency to the presidio lands, are all to be likewise treated as of no import or effect either legal or equitable.

It is submitted that such a judgment, in view of the undisputed facts, and under principles of law that are, at least in all other cases, undoubted, will be neither more or less than public confiscation.

The courts should be more disposed to uphold than to overturn private rights claimed under international treaty. Yet we find the counsel of the Government, with unusual zeal and most minute research into the hazy atmosphere of old Mexican land law, endeavoring to raise against us doubt, suspicion and every adverse inference that would be justified in a proceeding against confessed frauds and cheats.

This case requires that the Court shall consider the subject of supposed excess as arising from two different sets of circumstances.

First, by reason of the supposed measurements of the survey including a tract 400 cords square, instead of one 200 cords square.

Second, because the tract as actually measured and surveyed contains more land than would be included in a tract 400 cords square.

The Government contends that the excess arising from both circumstances shall be held not to have passed to the grantee, while the claimants contend that they cannot be deprived of either species of excess, but must be decreed to be the owners of the whole specific tract included within the calls of the survey.

We perceive, therefore, that there are three questions in the case:

First.—Shall the claimant be confirmed in his ownership of the land which was actually measured, marked and taken possession of, although it includes more than the 16 square leagues which the surveyor intended to measure?

Second.—Shall the claimant have confirmed to him a tract containing an area of exactly 400 cords square? or

Third.—Shall he be limited to a tract 200 cords square as decreed by the Court below?

II.

THIS CASE IS DIFFERENT FROM ALL THE OTHER ARIZONA LAND GRANT CASES IN THIS: THE SURVEY AND PROCEEDINGS SHOW ABSOLUTELY, MATHEMATICALLY, ON THEIR FACE, THAT THE INTENTION WAS TO SELL A TRACT FOUR LEAGUES SQUARE, INSTEAD OF FOUR SQUARE LEAGUES.

If there was a mistake here, it was not by reason of inacuracy of measurement. The survey was *intended* to cover four leagues square. It was run out so. The distances declared were 400 cords on each side, not 200.

This must have been apparent to the promotor fiscal when he approved the survey and other proceedings and advised an auction.

In the case of the Nogales grant this same officer pointed out an error in the calculation of the area, an error much less obvious and striking than the one alleged in this case. *161 U. S., 229.*

All the Mexican officers, to whom that fact was as obvious as it is to this Court, approved the proceedings, and the sale and grant were so made.

Nevertheless, this Court is asked to put upon these proceedings a construction which the Mexican officials all declined to adopt; to decree that, when the promotor fiscal recommended the sale of a tract obviously four leagues square, he didn't know what he was doing, but meant to recommend the sale of a tract only one-fourth as large; to decide that when the Intendente signed the order for an auction, he did not intend to sell a tract four leagues square, but a tract two leagues square; and the same as to the President and members of the Commission of Auctions; as to the decree of the Intendente, directing the expediente to be forwarded to the Superior junta de Hacienda for its approval; as to that body when it approved.

(Note that the Indente Bustamente, and the Promotor Fiscal Perez were members of the provisonal junta.)

THIS MEASUREMENT WAS ACCORDING TO MEXICAN LAW.

The order of October 22, 1791, provides:

"Considering sufficient for the new settlements that are being formed under their protection, the boundary of four common leagues, measured from the center of the plaza of the Presidio, two to each wind, I have also determined, in order to avoid doubts and appeals in the future, that the Captains limit themselves hereafter in the concession of grants of lots and lands to those that shall be included in said four leagues, without their being increased in any manner, leaving free and operative the exclusive jurisdiction that belongs to the Intendants of the Royal Treasury for the sale, composition and apportionment of the other lands in their respective districts."—*Reynolds, p. 62.*

We must presume—this Court must presume—that the Promotor Fiscal had this law in mind: and, having it in mind, he must have considered that it governed the case in hand.

The Governor Intendente had approved all the proceedings, declaring that they were "in all respects regular and sufficient."

Let us consider this sale in a negative aspect, specifying what it was *not*.

It was not a grant of a right *to locate* 4 sitios of land within these outboundaries.

It was not a right *to use* any particular tract of 4 sitios within the outboundaries.

It did not confer possession as against third persons to any particular tract of 4 sitios within the surveyed perimeter.

It did not oblige the grantees to erect monuments about a particular portion within the boundaries, but did require them to be placed at the boundaries as surveyed.

If the survey had been afterwards found to comprise less than 4 sitios, there was no right on the part of the purchasers to have the deficiency made good or a proportionate share of the purchase money refunded.

It was not a sale at a certain price per league, or per sitio, or per square foot.

Let us assume, for the purpose of argument, what the claimants contend is a fact, namely, that the lines of the original survey are well known and definitely located, and are fixed by natural landmarks and artificial boundaries, as testified by Bonillas, so that no element of uncertainty in specific description shall obtrude into the field of our discussion.

What is there then to say, except to point to the rule, which is more an axiom of common sense than a rule of law, that monuments control courses and distances, and courses and distances control quantity?

When either the courts or individuals desire to know the extent of a grant of lands, if the description by monuments and natural or artificial boundaries is plain, definite and unmistakable, there is no room for the statement of quantity to play any part in the ascertainment.

What, therefore, is to be done with this grant?

Here it stands, unmistakable, plain, definite, in its stretch from corner to corner, from point to point, on the surface of the earth.

Either that description and location must be accepted and the grant confirmed to the extent covered by the survey, or the court must say that notwithstanding the rule of law referred to, *this* grant must be limited to the exact quantity named, and the quantity shall overrule the certain calls of the survey; the court must declare that, when the survey says the line extends to the Carricito Spring and the monument is seen there marking the corner, nevertheless the claimant cannot have his land to that extent because it is more than 4 sitios; and so on through every course specified in the survey.

What would such a decision amount to if not to a judicial reformation of the original proceeding on the mere ground of a mutual mistake in quantity?

This court cannot look into that question, any more than it can inquire whether as a matter of fact the Mexican officials were guilty of corruption or other bad faith in conducting the proceedings for a survey and sale.

Mexico never raised such a question; the United States, as the successor of Mexico, cannot do so.

Mistake or fraud would be grounds on which the grant might be said to be voidable, but it is not void for any such reason; it is a valid title until directly assailed by the Mexican Government on those grounds. And the

lapse of time would bar any suit brought for the direct purpose of setting aside the grant on either of those grounds.

In *Ely's Admr.* v. *United States, 171 U. S., 220*, it was said by the court that the inaction of the Government of Mexico in raising any question as to the validity of the sale, or in seeking to disturb the possession of the grantee, was very persuasive of the power of the intendant to make the grant.

The same remark applies here. The failure of the government of Mexico to question the validity of this grant, either on account of mistake in measurement, or of *ultra vires*, is very persuasive of the belief that the grant was authorized and was intended to cover a tract 4 leagues square, as the papers showed.

III.

TO DECLINE TO CONFIRM THIS GRANT TO THE EXTENT OF THE ORIGINAL SURVEY (PROVIDED THAT IS SATISFACTORILY ESTABLISHED) IS TO VIOLATE EVERY RULE OF ESTOPPEL,—EVERY PRINCIPLE OF HONESTY AND FAIR DEALING, WE MIGHT JUSTLY SAY, WHICH IN ORDINARY TRANSACTIONS IS APPLIED TO THE CONDUCT OF CONTRACTING PARTIES.

Here is a tract which the grantor marked out as the tract to be sold; here are the monuments and landmarks made by the grantor's surveyors, the monuments erected and maintained by the grantees and their assigns for 30 years and over under a legal requirement. Here

is the survey itself. "All this," says the Government, "we grant, as 4 sitios of land."

Now, it is conceivable that a prudent person, understanding the law to be, that in case the Government should find it had made an error and surveyed too much, the owner could not on that account be robbed of his lands and his improvements, but could correct the mistake by merely paying the value of the excess at the original Government price, might be willing to buy a tract like this from the grantee or his heirs; but it is inconceivable that any one, even the wayfaring man, though a fool, should be willing to buy if he understood that the Government or its grantee could repudiate every act of estoppel it had committed, refuse to accept the only equitable right it possessed—the right to have the excess paid for—and compel the owner to accept a small fraction of the lands actually surveyed, bought, sold and in possession, and that fraction practically at the option of the Government.

The remedy of Mexico for its own mistake was one which did no injury to the grantee, and made the Government whole. Is this Government to have any greater or better equity than Mexico? When did the United States acquire the privilege of denying to these *bona fide* owners a vested right, a property right, which their own country assured to them?

It is easily supposable that a grantee of such a tract might make valuable improvements upon it; under the rule invoked by the Government, he would lose them entirely, provided they were outside the strict lines of the relocation ordered by the Court. By the operation of the principle contended for by the Government no compensation for improvements can be made.

It is as certain as anything within human conception can be, that it was not the intention of the Mexican Government to grant, or of the grantees to purchase, the

mere tract of land decreed to the claimants by the Court of Private Land Claims in this case.

It is certain that the residents of Santa Cruz would not have bid at the sale if it had been represented by the Government that the tract was located as the decree locates it.

Neither would Richardson have bought it, nor Cameron.

These lands were of different values in different parts of the tract.

The square decreed to be laid off by the Court of Private Land Claims has not the qualities of the tract appraised; it is not the same land.

IV.

THIS IS NOT A CASE OF A GRANT PRECEDING A SURVEY AND LOCATION.

IT IS A CASE OF LOCATION AND SURVEY PRECEDING THE GRANT.

In cases of the first kind the specific lands ceded or conveyed are not known until the act of survey and segregation is done.

If survey and segregration are not made no title passes to any particular lands.

In cases of the second class no grant is made until survey and segregation; then the lands surveyed and segregated are conveyed.

In the first class of cases something remains to be done to complete the title after the grant is made.

In the second class of cases nothing remains to be done, everything necessary has been done, when the grant is made.

When the survey and location have been made in cases of a floating grant the title is complete.

When the grant is made *after survey* in cases like the San Rafael grant the title is complete.

Any error in measurement in either instance is an error in a completed, not an inchoate, title.

The only imperfection in the title in this case arises, not from any lack or omission of legal requirements, not from any failure to follow to the very minutest detail, the whole course of proceeding marked out by the law of Sonora in order to make a complete and perfect grant, not from a mistake in measurement, but from an error in assuming, as is claimed by the Government, that to survey the tract required it was necessary to run 400 cords in each side of the square—a mistake due to the grantor, and not to the grantee; a mistake made before the purchaser had anything to do with the proceedings, when another person who never acquired any title to the lands was the petitioner for the grant.

That mistake was not such as, under our law, or the law of Mexico, could affect or annul the title of the grantee to the whole tract indicated as the one intended to be sold and conveyed.

Had the price fixed been by the league or the acre an equity would have arisen in favor of the grantor to be paid the purchase price of the excess of area, upon demand, after establishing the fact of a mistake.

The title of the grantee would not have been invalidated, either as to the whole or any part of his grant. His title to all would be as valid as his title to any part. He could be divested of no part of it except by judicial proceedings, and then only on failure to perform the

equitable duty of payment of the sum which he ought to have paid and would have been compelled to pay, provided the true area was known when the grant was made.

Noble v. *Googins, 99 Mass., 231.*
Threadgill v. *Pintard, 12 How., 35.*
Tarbell v. *Bowman, 103 Mass., 343.*

But in this case the purchase price was a gross sum, and not a price by the sitio or acre.

Hence no equity arises in favor of the grantor, but the case stands as a sale of a specific tract for a lump sum. The suggestion that the grantor made a mistake and did not intend to convey more than four sitios, cannot be regarded as against the innocent purchaser who bid and paid for the tract as a tract.

It is as though an owner declared his purpose to sell four square miles of land at a certain place by public auction, and when asked what particular four square miles, should say,—"There are the description, survey, and monuments: that is the land I am to sell."

The fact that he so declared, that he sold and conveyed the tract for a lump sum, to the highest bidder, and suffered him to go into and remain in undisturbed possession of the whole tract for over 30 years, would be decisive against the grantor if at a later date he should complain that the tract comprised 16 square miles, even if it could be shown that he had made an unintentional mistake as to the area of the tract.

The rule of property ought to be, and is, no less stringent against a government proprietor than against a private grantor.

The learned counsel for the United States refers to the fact that the alleged error of the surveying 16 sitios instead of 4 sitios was a mistake, and he uges that this

Government shall take advantage of the alleged mutual mistake at this time, without regard to the equities of the other party or their successors in title, and decree the claimants to be entitled to but 4 sitios, "because it was a mistake."

In every case of sale by specific boundaries where there is a greater area than the parties suppose the same thing can be said; there is mistake, mutual mistake; mistake as to quantity; perhaps mistake in the consideration paid; but who ever held that in such case the sale was void as to the excess?

Has the grantee no rights? Shall the party responsible for the error alone have the right to demand relief?

They who seek equity must do equity.

"While courts of equity have the power to set aside, cancel, or correct patents or other evidence of title obtained from the United States by fraud or mistake, and to correct under proper circumstances such mistakes, this can only be done on specific averments of the mistake or the fraud, supported by clear and satisfactory proof.

"The general doctrine on this subject is that, when in a court of equity it is proposed to set aside, to annul, or correct a written instrument itself, the testimony on which this is done must be clear, unequivocal and convincing; and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt.

"Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent on these official instruments, demand that the effort to set them aside should be successful only when the allegations on which this attempt is made are clearly stated and fully proved."

U. S. v. *The Maxwell Land-Grant Company, 121 U. S., 949.*

V.

THE DESIGNATION IN THE PETITION OF BUSTILLO OF THE QUANTITY OF LAND DESIRED, VIZ., 4 SITIOS, WAS IMPORTANT UNTIL THE LANDS WERE ACTUALLY SURVEYED AND THEIR BOUNDARIES MARKED; THEREAFTER THE SPECIFIC DESIGNATION WHICH WAS IMPORTANT WAS THE LANDS AS SURVEYED AND MARKED BY MONUMENTS, AND THE DESIGNATION OF QUANTITY BECAME UNIMPORTANT AS A MEANS OF IDENTIFICATION.

There was no idea on the part of any one—government officers or bidders—that anything more or less than the lands exactly comprised in the survey was to be sold and conveyed.

The appraisement related to the lands surveyed, as described in the surveyor's return, extending 400 cords along the north boundary of the town lands of Santa Cruz, running on the east from that line to the point in the Sierra del Cobre, near the Carracito Spring, a distance supposed to be 400 cords; thence west, a distance also supposed to be 400 cords, to the red hill; and thence south to the other monument of the Santa Cruz lands.

It was all the lands comprised within these boundaries which were appraised, not merely 4 sitios situated within them. It was the belief that all that area amounted to but 4 sitios; that may have been a mistake, but it was not the belief that anything less than the whole area was to be valued.

So also it was the lands surveyed and described by the surveyor which were *sold*.

It is absurd to say that these residents of Santa Cruz

had no eye to the natural features of the lands *as surveyed.*

There was the element of adjacency to the town lands; the water sources at the Carracito Spring, at the Jaralito, and elsewhere.

Would they have bid $1,200, more than five times the appraised value, if they had supposed a mere undefined tract of exactly 4 sitios was all that they were to get—and that tract not bounded, surveyed or marked, its characteristics unknown, the presence or absence of water unknown? It is absurd to think so.

And of what were they put in possession? Was it not of the tract as surveyed? Not of sitios the precise area of four, but of this whole surveyed area—*supposed* to be 4 sitios in extent—but little or no importance being attached to the feature of exact quantity, all the reliance being upon the natural features that could be seen, and the surveyor's description, and the monuments.

And where were the purchasers bidden to place monuments?

At the confines *of the surveyed tract*, not at the limits of some vague floating expanse within the surveyed area, an expanse whose location, boundaries and natural features were unknown.

"Here," said the officers of the Government, "are 4 sitios of land for sale." The bidder enquires, "Where are they; what do they comprise?" The Government officers point him to the survey, the description, the monuments. He takes the description and goes upon the land; he goes over it, following the calls of the survey; he sees the springs, the mountains, the gulches, the water courses; he notes the adjacency of the town lands for a distance of 400 cords. He forms an opinion of the desirability of that tract as it is described, and reports to his proposed copartners. They discuss the

value of the property; they decide they will buy it, even if they have to pay $1,200 for it.

Their representative Romero attends the sale, runs the property up, has it struck off to him. The money is paid, possession is taken, the expediente is issued later; the buyers continue in possession unquestioned and undisturbed by the Government for years until their Government parts with its sovereignty over the lands; when, during all those proceedings and all these years, ought the buyers to have known or suspected that they were getting or had got title, not to the tract they had in mind, but to a mere sixth part thereof, and that part not located or defined, or its quality or characteristics determined?

Surely no vendor would ever even suggest in seriousness such an unjust proposition as is put forth by counsel for the United States in this case.

In *Ainsa* v. *United States* it would seem to be conceded that, if it be proven there was a determination of metes and bounds by actual survey and delivery of possession accordingly, the grantee would take all the public lands included within the metes and bounds without regard to the expression of quantity.

On page 227 it is said:

"In any view, whether treated upon the principles "applicable to a voluntary grant or as a purchase and "sale, appellants' contention that Don Elias and his par- "ents took all the public lands north of Casita, as one "tract by metes and bounds could be sustained only on "proof of a determination of such metes and bounds by "actual survey and delivery of possession accordingly."

The Court in the Ainsa case found as a matter of fact that there was no delivery of possession according to the survey; that the official who was claimed to have delivered such possession was not a judicial officer and had no authority to perform a judicial act; and that, as

a matter of fact, neither that official nor the attending witnesses nor the grantees were, on the date on which possession was supposed to have been delivered, upon the land, nor anywhere near it, but were at the city of Arizpe.

Judicial possession was delivered of the whole of this San Rafael tract as surveyed, and this Court so held in construing this very title in *Cameron* v. *U. S.*, *148 U. S.*, *301*, where the language is, "While a grant of four square leagues in the place called San Rafael de la Zanja, standing alone, would appear to have been a grant of a certain quantity of land, when it appears by the same instrument that the limits of the grant were to be designated by monuments of lime and stone; that such designation was actually made, and that juridical possession of land was delivered in pursuance thereof; it is at least open to doubt whether it does not fall within the class of concessions by specific boundaries, as these grants are distinguished in *U. S.* v. *McLaughlin*, *127 U. S.*, *428*," and the Court further stated, referring to *Fremont* v. *U. S.*, *58 U. S.*, *542*, "as no survey in that case was made, it was held to be a grant of quantity only."

If the centre point be taken and only four sitios measured off in a square, as directed by the decree, the south line will not reach the north boundary of the Santa Cruz town lands.

Yet, that is what the purchasers undoubtedly desired and what they thought they were buying.

The petition of Bustillo expressly asked for a tract adjoining the presidio on the north.

Record, p. 526.

The survey runs 200 cords from the centre monument

to the mouth of the Canada del Portrero, where the monument of the town lands is to be found.

Record, p. 111.

The survey ran 400 cords east and west along the north side of the town lands.

The purchasers, when they bid $1,200 for the lands, undoubtedly thought they were acquiring a tract adjoining the town lands from the southwest to the southeast monument, whatever the distance.

Is it not clear that the boundaries, as fixed by the survey, were *for all purposes* supposed to be the accurate and true boundaries of the precise lands conveyed?

If before the cession of Arizona anyone had desired to purchase lands adjoining this tract, the owners of it would undoubtedly have been summoned and the boundaries marked by the survey would undoubtedly have been respected. Why summon the owners of adjoining lands if the true and final boundaries of the tract to be granted were not to be fixed by the survey?

If absolute accuracy in the survey is essential to vest a legal title, no Mexican grants are valid, for, it is safe to say, none are based on strictly accurate surveys.

The amount of land petitioned for is not controlling.

In the Ely case the petition was for 2 sitios, the survey for $1\frac{3}{4}$.

The law required the ability of the petitioner to stock the lands to be proven; and then allowed anybody to overbid him and secure the grant with no proof of ability.

VI.

DECREE NO. 51 OF SONORA OF MAY 12, 1835, OPERATED AS A LEGISLATIVE GRANT, CONFIRMATION AND RATIFICATION OF THE ORIGINAL GRANT IN THIS CASE. THE REQUIREMENT THAT THE GRANTEE SHOULD MAKE FURTHER PAYMENT IN CASE OF EXCESS THEREAFTER FOUND, IS ONLY A CONDITION SUBSEQUENT, OBLIGATORY ON THE GRANTEE WHEN, AND NOT BEFORE, AN EXCESS WAS ASCERTAINED, IN ACCORDANCE WITH THE DECREE, IN A PROPER JUDICIAL PROCEEDING.

As translated in *Ainsa* v. *United States*, the decree of May 12, 1835, is as follows:

"Art. 1. Those who have acquired property in lands "of the State by lawful title are owners in good faith, "even when they have lost that document, for they "are entitled to revalidate it upon proof of the incident "that may have occurred.

"Art. 2. Those are likewise *bona fide* owners who, "under the descriptions given in their records of survey, "occupy some excess of land; and they are entitled to "such excess, even after such excess is shown, without "any other requirement than that of paying for the ex-"cess in accordance with the quality of the land and "the price which prevailed when the land was meas-"ured and appraised; and only in case the owner does not "want the excess, or when such excess is very great in "the opinion of the government upon the report of the "treasurer, shall such excess be awarded to any one de-"nouncing or soliciting it; and such persons shall bear "the expense of the resurvey, if the excess has not been "ascertained. In lands measured by calculation (grad-"uacion) none shall be regarded an excess that does not "exceed half a sitio."

It has been shown by my associate, Mr. Rochester Ford, in his brief in case No. 40, October Term, 1901, by

many instances, that this law continued in force down to the date of the Gadsden Treaty. And in *Ainsa* v. *U. S.*, *161 U. S.*, *226*, is quoted a statement of the Attorney General of the Treasury, under date of December 5, 1842, which declares that the law of 1835 was still in force at that time. So that it could not have been repealed by the constitution of 1836, as claimed by counsel for the Government.

The language of Article 2, above quoted, is very plain. It refers to "occupants of some excess of land;" it declares such occupants to be *bona fide* owners of the excess, even after it has been shown, on condition of paying the additional price which prevailed when the land was measured and appraised.

This decree is a legislative confirmation of the legality of grants containing excess. It does not distinguish between the causes that have resulted in such excess. It refers to all who occupy such excess of land under description given in their records of survey.

This would cure any defect of title arising from alleged lack of power on the part of the granting officer to grant more than four sitios to any one person, and all other similar defects which related merely to excess.

The decree declares that such owners are entitled to excess at the then present moment, and that they would continue to be entitled to such excess, even after it had been demonstrated by a survey, if they complied with the conditions subsequent.

In the mean time no duty is laid upon the grantee. Until the Government ascertained the excess, the grantee was entitled to the whole property as contained within the description in his survey. After the Government had ascertained on its own proceeding that an excess existed, the grantee was still entitled to it upon the performance of a condition subsequent, namely, payment of the balance of purchase money.

The owner had the right to rest upon the presumed correctness of the original survey, which was made by the sworn officers of the Government. If he has reason to suppose that an excess exists in his grant, the right is given him, but no duty is laid upon him, to institute proceedings to ascertain the amount due from him to the Government, as a means of closing absolutely and finally the question of excess, and putting it beyond the power either of the Government or a third person to raise the question subsequently.

It is obvious that the Legislature of Sonora, at the time of the passage of the decree of May 12, 1835, was aware of the irregularities and mistakes almost universally existing in surveys, and that it intended by this decree to put an end to the disputes and contentions going on as to lands already surveyed and granted, by confirming the right and title of the grantees to the lands which they occupied, to the extent of the boundaries delineated in their surveys. It was a statute of peace intended to quiet and settle titles and prevent disturbance of possession of *bona fide* settlers who were engaged in improving their property and adding to the wealth and security of the State.

This law was intended as a release and quit-claim on the part of the Government of its right to reform the title by judicial procedure upon the ground of partial failure of consideration.

It recognized the *legality* of the grant to the full extent of the survey and description, and asserted no further or other equitable right in the Government than the right to claim payment of the additional price after ascertainment by corrected survey.

A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit-claim from the Government (*Langdeau* v. *Hanes*, *21 Wall.*, *521*).

A grant of a right or interest in property by the Government, made by means of an act of the Legislature, is irrepealable (*Terrett* v. *Taylor*, *9 Cranch*, *44*.

Mexico had not power to repeal the law of May 12, 1835, so as to affect the vested rights of its grantees or their sucessors. Repeal would have been confiscation.

The legal title to the entire tract contained within the boundaries of the survey became vested in the grantee, subject to divestiture by judicial proceedings for reasons sufficient in law; the title of the grantee was just as good to one part of the land described in the title papers as to any other part thereof, until such a time as his title should have been declared forfeited by reason of his failure to comply with the conditions of the law; hence the right to pay for any excess upon a judicial ascertainment of its existence and value was not a mere privilege to purchase any particular part of the lands described, and cannot be construed as a privilege to purchase anything whatsoever, but was a mere equitable obligation to perform that which by subsequent proceedings had been discovered to be equitable and just as between the parties.

The right to pay the deficiency in price was a *vested right* to retain the ownership and possession of the entire tract, with no other obligation, requirement or condition than that of paying any balance of the purchase money which might be judicially determined to be due to the Government in some future proceeding, by reason of the fact that quantity was of the essence of the original contract.

The treaty protects such a vested right.

The term "property," as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract, those which are executory as well as those which are ex-

ecuted. In this respect the relation of the inhabitants to their Government is not changed, and the new Government takes the place of that which has passed away (*Soulard* v. *U. S.*, *4 Peters, 511; Delassus* v. *U. S.*, *9 Peters, 131.*)

It would be absurd to say that the undoubted right of the owner of this grant to remain in possession of all the land embraced in the boundaries set forth in the survey is not a valid and valuable property right protected by the treaty, and which this Government is bound to respect.

Counsel for the United States assert that the law of 1835 was a mere invitation to parties to acquire title, and created no vested right.

"Being no part of the original contract," they say, "it created no vested right as a matter of contract."

That law was a confirmation of what was previously a *bona fide* claim of title, a declaration which established as law, and against its interest, the status of the Government to lands so held by grantees or their assigns; it was a declaration which encouraged parties so in possession of grants which were known or supposed to contain excess to retain their possession, continue their improvements, defend themselves against Indian aggressions, and offer their lands for sale in good faith, confident that any defect in full title could of right, and not of grace, be repaired whenever duly ascertained, upon the equitable terms of payment of the balance of purchase money.

A declaratory statute like this relates back to the original transaction, and establishes finally and irrepealably, as against the governmental proprietor, the equitable title, and the lawful claim and possession of the grantee. To say that this law is a mere naked privilege, is to ignore the circumstances under which it was enacted,

the object to be accomplished, and the very words of the act itself.

Whether considered as a grant *in presenti*, or as a legislative declaration of the rights of the Government and the grantees under the original proceedings, it was effective to establish the *right* of the grantees to the whole area within their boundaries; for this no consideration was required, even if such a thing could with any propriety be supposed to be an element of a governmental grant, which it could not.

The status of the grantee, his *bona fides*, his vested equitable rights, being thus solemnly recognized, could not be changed or divested by any subsequent repeal of the mere method of procedure contained in the law.

That would be confiscation, and it is for practical confiscation that counsel of the Government is here contending.

Counsel speaks of demasias as public *land* of the nation.

That was not its character. The nation had a right, an equity, in the excess lands, but it was very different from the full, free and ordinary title to the unoccupied public domain. The right of the nation was not primarily to the lands, but to the money equitably due on account of their sale by mistake.

The proceedings from survey to sale all contemplated the conveyance of this whole tract. All the Government officials, surveyor, appraisers, promoter fiscal, intendente, we are told by counsel, thought they were dealing with and conveying only 4 sitios.

But they supposed the 4 sitios comprised this whole tract, and they did not intend to grant less than the quantity supposed to be within the limits of the survey.

They certainly did not mean to survey, appraise, sell or convey any particular 4 sitios of land within the bound-

aries, as distinguished from the whole area of the survey.

Is it said that what they intended to grant was a tract measured from the center point 100 cords to each wind? That is what the Court of Private Land Claims has adjudged the intention to have been. But obviously, indisputably, the tract surveyed, appraised, sold, judicially delivered over to the grantee, was not such tract, but one measured 200 cords to each wind.

That is the very survey which the Attorney-General approved. How can a conveyance by definite boundaries be more clearly indicated?

If we speak of the country stretching from the Atlantic Ocean to the Mississippi River, and from Canada to the Gulf, comprising four States, have we indicated the whole or only a part of the territory within those limits?

This Court has said:

"The Government promised to inviolably respect the property of Mexicans.

"That means the property as it then was, and does not imply any addition to it. The cession did not increase rights. That which was beyond challenge before, remained so afterwards. That which was subject to challenge before, did not become a vested right afterwards."

Ely's Admr. v. *U. S.*, *171 U. S.*

That is all true. The statement might be amplified, however. It might well be said that when the Government promised to inviolably respect the property of Mexicans, not only did it not imply any addition to it, but that it did imply no diminution from it. The cession did not decrease rights. That which was a vested right before, could not be challenged just because this Government had provided no method by which it could, in such a case as this, stand in the place of Mexico and

accept the balance of purchase money ascertained by subsequent proceedings to be due from the grantee.

And that leads me to the suggestion that if it be thought by the Court that no effect can be given to the offer of the claimants to pay the amount of purchase money that Mexico could have claimed, such a fact cannot operate to annul the claimants' title; otherwise the neglect of the Government to provide a means to collect money equitably due it would be turned to its own advantage, and all that would be required to work a forfeiture would be the refusal or neglect of the Government to appoint an agent to receive its revenue.

How does the equity of the claimant differ from that arising from an executed contract of sale where the vendor puts the vendee in possession, with a provision for the payment of the purchase money in future instalments?

Suppose Mexico had sold under an agreement of that kind, and the purchaser had entered, and paid part of he instalments, and he not being in default at all, Mexico had ceded to the United States the territory—would the lands then have become part of the public domain? Would the Court decline to recognize the validity of the vendee's title because he did not pay the remaining instalments, which Mexico could not, and this Government would not, accept?

The claimant's title was never subject to peremptory challenge by Mexico. The owners were never in default to Mexico. They were always in lawful possession of the whole area; under a form of conveyance which covered the whole; subject to no ouster or disturbance, except only that if Mexico should at any time, upon a showing of demasias, demand additional payment, and they should refuse such equitable demand, their title should *thereby* be forfeited. Forfeiture implies original

ownership. Divestiture of title by forfeiture of that kind could not occur until lawful demand of payment and refusal.

The fact that the one having the right to make the demand on which the forfeiture may be based has, by his own act, put it out of his power to do so, cannot be considered by a third party as equivalent to the forfeiture without any demand.

Through all the Mexican land laws runs the principle that titles shall not be invalidated by reason of default in payment of the purchase money or of excess, provided the purchaser be willing to do equity by paying the additional price (Hall's Mexican Law, Secs. 2106, 2107, 2108, 2109, 2110, 2125, 2126; 478, 479).

The basis of the law of demasias is a *right* in the grantee. That right is to correct the only error which can equitably be suggested in favor of the Government, which is responsible for the existence of the error, viz., to pay the additional price which in good conscience he should have paid if the true area had been originally known.

The grantee is without fault. All the proceedings are conducted by the Government—the measurement and survey, the appraisal, the issuance of the papers, the auction sale, the delivery of possession.

So the law did not treat the case as even justifying putting up the excess to auction to see what some other would pay, and allowing the grantee to take it at that price, as in the case of estimates and plans for municipal improvements under present Spanish law.

It allowed the innocent and *bona fide* occupant to keep it on paying the price which prevailed when the land was measured and appraised.

The *mistake* was mutual, but the *fault* was on the part of the Government.

And these mistakes were common, we ought to say, universal. The Government took no steps to seek a correction of the mistake which *its own agents* had occasioned; made no claim for the extra compensation, made no judicial move for an adjudication of forfeiture to divest the *bona fide* holder of the lands.

The law of 1835 declares that those are *bona fide* owners who, under the descriptions given in their records, occupy some excess of land: and they are entitled to such excess even after such excess is shown upon paying the appraised price.

The United States acquired this territory with such a right outstanding in these grantees; what part of that right is not under the protection of the treaty?

Can a *right* as against Mexico to retain the paper title and the possession of a grant to an excess amounting to thousands of acres of land upon the payment of a few cents an acre *when demanded* be repudiated by the United States by solemn judicial decision merely because the ceding nation is no longer in a position where it can demand its additional compensation?

Until it was *demanded* the grantee was not bound to pay the price of the excess.

Was the effect of the treaty to *destroy* vested rights, to deprive the grantee of his title and possession without any demand or refusal of payment?

Can the United States claim a higher or better right to these lands than Mexico had?

On what principle should they? The whole idea of the law of demasias is founded upon the fact that the *Government* had made mistakes, whereby innocent purchasers were in possession of specific tracts of land which, by no fault of theirs, they had taken as containing less area than actually was the case, and that com-

plete justice would be done by merely paying the original price.

The grantee under Mexican law had the same title and right to one part of a tract containing an overplus that he had to any other part. No one could specify any portion as valid and paid for, and another portion as demasias and not paid for.

The Government itself, under the laws of Mexico, could not enter upon or molest the grantee's title to, or possession of, any part of the surveyed tract, even under the law of demasias, *until after the excess had been shown*—that is, demonstrated by a new survey or other proceeding of a quasi-judicial character.

See 1 Orozco, 345.

Until subsequent survey or other quasi-judicial procedure showing an excess, there was, in the contemplation of law, no excess.

Only then did it devolve upon the grantee to act. He had the choice of two courses: (1) either to pay for the excess at the original appraised value, or (2) to permit the excess to be sold to a third party.

The latter was in the nature of an alternative, and was the penalty of forfeiture suffered for not doing manifest equity as between himself and the Government.

VII.

THE PROCEEDINGS OF OFFICERS OF THE GOVERNMENT IN SURVEYING AND ESTABLISHING THE BOUNDARIES OF TRACTS OF LAND FOR PURPOSES OF SEGREGATION FROM THE PUBLIC DOMAIN ARE IN THE NATURE OF A JUDICIAL PROCEEDING, AND HAVE ALL THE FORCE AND EFFECT OF JUDICIAL DETERMINATION BINDING UPON THE GOVERNMENT.

Graham v. *U. S.*, *4 Wall.*, *259.*
U. S. v. *Pico*, *5 Wall.*, *536.*
Smelting Co. v. *Kemp*, *104 U. S.*, *640.*
Taylor v. *Brown*, *5 Cranch*, *234-250.*

In *Taylor* v. *Brown* Chief Justice Marshall, speaking of the method by which lands were located and surveyed in Kentucky on military warrants issued under the proclamation of 1763, said:

"The survey is an appropriation of a certain quantity of land by metes and bounds, plainly marked by an officer appointed by the Government for that purpose, and it would seem that the Government receives his plat and certificate as full evidence of the correctness of the survey. This being the case, it is admitted by the Government to be an appropriation of the land it covers."

In *Vanderslice* v. *Hauks* (*3 Cal.*, *28*) the case of *Taylor* v. *Brown* was cited and followed in this respect, and it was decided that even where the grant provided for a measurement and reservation of surplus, it was a grant of title to the whole, with a defeasance as to the surplus. The Court saying:

"Until the proper proceeding is adopted to restore the surplus to the public domain 'to every and to each part of the land granted, its owner has an equal right.'"

A case of great importance is

White *v.* Burnley, 20 How., 235.

The second proposition decided by this Court in that case was

"The fact that the surveyor included more land than was called for does not avoid the grant. Whatever the State might do *to annul it*, third parties have no right to consider it void."

Upon this point the defendants prayed the Court to instruct the jury as follows:

1. That the colonization laws of Coahuila and Texas did not authorize the Commissioner of De Leon's colony to extend to Benito Morales a title for more than one league of land (a league being twenty-five millions of square varas); and the title being upon its face for fifty millions square varas, it was from the beginning null and void, and gives no right to recover.

2. That even if there was authority of law to include the excess of twenty-five millions square varas in the area, and exclude it from the computation because such excess was covered with salt bays, as expressed in the grant, yet if the jury believed from the evidence that the reasons were false, and that there was in fact a great excess of land (over and above twenty-five millions square varas) which was not covered with water or salt bays, the grant was void because of the excess, and the jury will find for the defendants.

But the Court refused to give these instructions, and gave to the jury the following instructions, at the instance of the plaintiff:

1. That at the date of the grant under which plaintiff claims, both by the general law and the colonization law, saline bays, extending from the gulf or the large bays, could not properly be included in a grant to a colonist, such bays, though embraced in the lines of the survey, would properly have been deducted from the

computation of the area of the grant, and the plaintiff's grant, on its face, is not invalid on that account.

2. The statement made in the survey contained in plaintiff's grant, that half of the survey was covered with saline bays, is *prima facie* to be taken as true at that time.

3. Any change which may have taken place since in the country included in the lines of the survey will not affect the validity of the grant.

4. Although the jury should believe that the grant when surveyed did not contain an entire league covered by saline bays, yet if they believe that the statement in the survey was caused by the mistake or neglect of the surveyor, it will not vitiate the grant; and in order to render the grant invalid on this ground, the jury must believe from the evidence that there was intentional fraud committed by Benito Morales, the grantee.

Upon the questions involved in these requisits and instructions the opinion of the Supreme Court was as follows:

"The quantity of land that the lines of survey include is equal to two leagues, whereas only one league is called for; and the reason the surveyor gives in his certificate of survey for the excess is, that he included in the survey a bay of the ocean, which was not subject to grant, a quantity equal to a league."

"This statement was proved to be untrue—almost entirely. The grant contains two leagues and more of fast land; and for this reason it was insisted at the trial that it was fraudulent and void. But the Court charged the jury to the contrary, with several qualifications. These we deem to have been useless; as our opinion is, that a regular grant (that is, a complete title, made by those exercising the proper political power to grant lands) is not open to this objection, by an opposing claimant setting up a younger title; and we understand that on this

principle the well-considered cases of *Hancock* v. *McKinney* (*7 Texas*) and of *Swift* v. *Herrera* (*9 Texas*) proceed. Such is the settled doctrine elsewhere. (*Overton* v. *Campbell, 5 Hayw. Ten. R.*)"

"How far the Government of Texas might interfere by 'due course of law' (that is, by a suit in its name and behalf) is a question for the Government to decide. *Owen* v. *Rains's Lessee* (*5 Haywood's Ten. R., 106*) is to the effect that it can only be done by suit."

"*To hold that this grant was void, because the surveyor returned an excess in his survey, without any evidence that the grantee participated in the matter, as is the case here, would be an alarming doctrine through a wide-spread portion of the United States. No instance is recollected where the State has interfered, by suit, to reform a land patent for excess of quantity. The consideration of more or less excess, to constitute a prima facie case of fraud, would give a latitude of discretion to the judicial department over the executive and granting power, inconsistent with the independence of the latter in this branch of administration.* Under the Spanish and Mexican Governments the judiciary had no authority to interfere at all in any case. The political department retained to itself all the power to reform or to annul titles.

But where the executive authority intervenes and calls on the courts of justice to aid 'in the due course of law,' no collision between the two departments can occur."

"*That a case of excess sufficiently gross could arise to justify a proceeding by suit on the part of the State of Texas to reform a Spanish grant we do not doubt.* (*United States* v. *Hughes, 11 How., 552.*) *But the question here is not of reform; it is of original nullity.*"

"What was the condition of Morales's title? He applied for a league of land as a colonist; his petition was granted, and a survey ordered. The surveyor made return of his survey to the Commissioner, who, in effect, exercised the granting power in De Leon's colony. The lines of the survey called for other adjoining tracts, and their corners previously made. On the faith of this survey the Com-

missioner proceeded to extend the title to Morales. It is probable that no actual survey was made on the ground; and hence, it happened that the surveyor's certificate stated that more than one-half of the boundary shown on the plat was covered by water, and not subject to grant. *Of this matter the surveyor and the Commissioner, as the judge of land distribution, had jurisdiction; it was their duty to act justly between the Government and the grantee. The Commissioner acted by extending the title of possession, and thus vested a full title in Morales. No one at that time had any right to complain, if the Government was content; it had so far acquiesced, and younger grantees are bound by that acquiescence.*"

JOHN W. GRIGGS,
Counsel for Claimants.

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Supreme Court of the United States

OCTOBER TERM, 1901.

No. 109.

UNITED STATES, APPELLANT.

vs.

A. A. GREEN, R. R. RICHARDSON, COLIN CAMERON, ET AL.

No. 129.

HARVEY L. CHRISTIE AND COLIN CAMERON, APPELLANTS,

vs.

UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR HARVEY L. CHRISTIE.

Statement of the Case.

The proceedings for the purchase of this grant commenced July 19, 1821, upon a petition by Manuel Bustillo, a resident of the presidio of Santa Cruz, for leave to pur-

chase four sitios (17,354 acres) of land for grazing purposes. The proceedings for the survey and sale were carried on under the laws of Spain, which continued in force in Mexico for a considerable period thereafter. These laws, as well as the laws of Mexico and of the State of Sonora, down to the date of the Gadsden treaty, vested no power in the granting officer to make any sale of an UNSURVEYED OR UNLOCATED QUANTITY of land, to be SUBSEQUENTLY LOCATED, like the "floating grants" in California. All of the Sonora grants were sales of specific tracts of land for a valuable consideration and ACCORDING TO A PRIOR SURVEY. Any other kind of grant would have been void for want of power in the officer to make it.

In surveying this tract of land the officer in charge of the survey, through IGNORANCE AND NOT THROUGH FRAUD, surveyed SIXTEEN SITIOS. (See evidence referred to in my argument under title "MISTAKES IN SURVEYS.")

He was ordered to measure a tract of land to contain 4 sitios (17,354 acres), but his measurements and estimates, if absolutely correct, would embrace a tract of land containing 16 sitios (69,416 acres), or just four times the quantity which he had been ordered to survey. His measurements and estimates were grossly inaccurate, however, and, in consequence thereof, the tract of land actually surveyed by him and of which he put the petitioner for the sale in possession, as agent for the ultimate purchaser, in accordance with the laws and custom, contains an area of *about 35 sitios* (152,889 acres), or, in other words, the tract of land surveyed and sold contains an area A LITTLE MORE THAN TWICE AS LARGE AS THE QUANTITY SHOWN UPON THE FACE OF THE TITLE PAPERS BY THE PROCEEDINGS OF SURVEY, or nearly nine times as large as the quantity mentioned in the title papers and which the surveyor was ordered to survey.

THIS WAS NOT AN UNUSUAL MISTAKE, HOWEVER, IN THE SURVEY OF GRANTS OF LAND IN THAT SECTION OF MEXICO AT THAT PERIOD OF ITS HISTORY, AND SIMILAR MISTAKES WERE

NOT INFREQUENT IN ANCIENT SURVEYS IN THE AMERICAN COLONIES WHICH SUBSEQUENTLY BECAME THE UNITED STATES.

The tract of land so surveyed was afterwards appraised at $210, and was subsequently SOLD FOR A LUMP SUM OF $1,200 at public auction to the highest bidder.

Number of Purchasers of Grant.

The land was purchased by Ramon Romero and twenty-one other residents of the presidio of Santa Cruz, *and the law authorized two or more purchasers to become joint owners and grantees of a single tract of land containing an area equal to four sitios for each grantee.*

It appears on the face of the title papers that the number of grantees was not less than three, AND MUST NECESSARILY HAVE EXCEEDED FOUR persons (unless the number of residents of the presidio of Santa Cruz was less than four). *Hence the number of grantees exceeded one person for each four sitios of land contained within the tract of apparently sixteen sitios* shown by the title papers to have been measured, and *the number of grantees exceeded one person for every four sitios of land actually contained within the perimeter of the grant, according to the monuments called for in the title papers,* as that area amounts to a little over thirty-five sitios, so that *each grantee actually received an undivided interest of only about one and a half sitios of land* instead of four sitios. The laws of Mexico authorize a partition and allotment by judicial procedure as to tracts of land thus held in common.

Price Paid for Land to Mexican Government Exceeds Value of Entire Tract, and Four Sitios at Center of Grant Practically Worthless Then and Now.

Hence right of Mexican government to reform title and forfeit any excess must be a plain, unequivocal, and strictly legal right, as it cannot be based upon any principle of equity or of sound morals or of natural justice.

The price paid to the Mexican government for the land AMOUNTS TO AN AVERAGE OF $75 PER SITIO FOR THE SIXTEEN SITIOS, which are shown by the title papers to be contained in the grant according to the survey.

The price paid EXCEEDS THE MINIMUM VALUE *which the government was willing to accept for the land*, PROVIDED EACH AND EVERY ONE OF THE SIXTEEN SITIOS WAS OF THE BEST QUALITY, to wit, contained permanent running water.

The price paid for the land EXCEEDED THE PREVAILING MARKET PRICE FOR SIXTEEN SITIOS OF LAND in that section of that country at that time, EVEN IF EACH OF THE SIXTEEN SITIOS CONTAINED PERMANENT RUNNING WATER.

The price paid for the land EXCEEDED THE PREVAILING MARKET PRICE FOR THE ENTIRE QUANTITY AND QUALITY OF LAND ACTUALLY CONTAINED WITHIN THE PERIMETER OF THE GRANT.

The price paid for the land EXCEEDED THE MINIMUM PRICE WHICH THE GOVERNMENT WAS WILLING TO ACCEPT FOR THE ENTIRE QUANTITY AND QUALITY OF LAND WHICH WAS ACTUALLY CONTAINED WITHIN THE PERIMETER OF THE GRANT.

The grant contains practically no land whatever which is capable of cultivation by irrigation or otherwise. On the contrary, it is a plateau about 4,500 feet above the sea level, which is badly broken up throughout a great portion of it by rough hills and gullies, and it is "a waste country wherein the valley was devoid of trees, with low places and table lands, completely dry, there being no running water

upon them for irrigation," to use the language of the Mexican official who was intrusted with the original survey.

Four Sitios at Center of Grant Utterly Valueless.

The evidence shows that a tract of land containing only four sitios, located in a square at the center of the grant, would not support to exceed four hundred head of cattle, and hence it would be practically valueless, and IT IS INCONCEIVABLE THAT ROMERO AND THE OTHER RESIDENTS OF SANTA CRUZ INTENDED TO PAY THE ENORMOUS PRICE (in those days) OF $1,200 FOR SUCH A TRACT OF LAND TO BE USED BY THEM AS A CATTLE RANCH.

It would have been better to oppose the survey as incorrect, and to oppose the sale upon the ground that Bustillo could not purchase more than four sitios of land, and to thereafter themselves denounce and purchase the land which would lie between the southern boundary of such a grant and the northern boundary of the presidio of Santa Cruz, because said tract of land lying between the two grants could have been purchased for about $40, and it would have enabled the purchasers to secure the benefit of all the running water and grazing land which Bustillo would have acquired by his purchase. They actually placed from two to twenty thousand head of cattle on the grant immediately.

Minerals Added No Value to Grant.

The title to minerals did not pass to the grantee under a Spanish or Mexican grant, and hence in surveying or selling land for cattle ranches the Government paid no attention to the existence or non-existence of minerals within its boundaries; and it was then essential, and is now, in that country to have some portions of the ranch mountainous in order to furnish protection and feed to the cattle in winter.

And a square at the center containing 16 sitios would in-

clude simply rough gullies, in addition to the valley, and not any of the mountains.

The act creating the Court of Private Land Claims expressly provides that in confirming title to such grants and in issuing patents to the same the United States shall exclude the minerals.

Under the laws of Spain and Mexico any person may prospect for minerals upon private property and denounce and obtain title to the same.

Possession.

The original grantees placed about 20,000 head of cattle on the grant, and built corrals and houses thereon and occupied the whole thereof to the boundaries claimed by the present petitioners for confirmation. And they maintained this possession continuously from 1821 until 1854, with the exception of brief intervals of time, during which the Apache Indians were unusually active (Rec., pp. 204, 205, 208, 384, 427, 430, 431, 91, 330, 334, 335, 443, and 446).

THIS POSSESSION WAS MAINTAINED AT GREAT COST OF PROPERTY AND SACRIFICE OF LIFE.

Occupancy was THE PARAMOUNT CONSIDERATION exacted by the Mexican government, and the title papers contain the condition that THE LAND WILL BE FORFEITED AND ANY OTHER PERSON MAY DENOUNCE THE SAME if the grantee or his successor in interest fails to occupy the same for a continuous period of ONE SHORT YEAR.

Present Owners Bona Fide Purchasers.

The original grantees continued to maintain possession of the grant after the treaty, and paid taxes upon the same to the Territory of Arizona, until some of them sold to Alfred A. Green, in 1879, and they leased that portion of the grant upon which the mining camp of Harshaw is located to the

original mining locators for a period of either twenty or forty years, in 1878 (Rec., pp. 330, 334, and 335).

The record in this case shows that R. R. Richardson contracted with Alfred A. Green for the purchase of his interest in the year 1880, and that Colin Cameron purchased the interest of Richardson in 1883, and paid him something over $46,000 for his interest, and that Cameron afterwards paid additional sums, amounting in the aggregate to over $80,000. for the interest of other Mexican owners.

The record further shows that Colin Cameron so purchased the grant as the agent and trustee of William C. Whitney and William Brown, of New York, N. Y.; ex-Attorney General Wayne MacVeagh, J. Don Cameron, John H. Small, George S. Billmeyer, and W. W. Ker, of Pennsylvania, and Frank Ely, of St. Louis, Missouri, and others, and that these owners have expended about $500,000 in stocking, improving, and attempting to maintain possession of the grant.

It further shows that since the year 1883 they have paid to the Territory of Arizona between $25,000 and $30,000 in taxes upon the grant alone; and it will be shown in my argument that these taxes were not paid for possession merely, but, on the contrary, that *the assessment was upon the land itself* and *upon the entire tract of land contained within the perimeter of the grant as claimed*, REGARDLESS OF THE FACT THAT ONLY A SMALL PORTION THEREOF WAS IN THE EXCLUSIVE POSSESSION OF THESE CLAIMANTS, AND THAT PRACTICALLY THE WHOLE OF THE GRAZING LANDS WITHIN THE GRANT ARE OCCUPIED IN COMMON BY THE CATTLE OF THESE OWNERS AND OF SQUATTERS WHO HAVE SEIZED AND FENCED SMALL TRACTS OF THE BEST PORTIONS OF THE VALLEY LANDS, SO AS TO INCLOSE AND HOLD THE BEST PORTIONS OF THE PERMANENT RUNNING WATER WHICH IS UPON THE GRANT.

The validity of the grant title was passed upon by eminent attorneys for the present owners before they purchased, and they were advised that the grant conveyed an unimpeachable title to all the land within its perimeter, according to the boundaries described in the title papers (Rec., p. 185).

United States Estopped.

The United States has exercised dominion over the section of country in which this grant is located for a period of forty-eight years, and the grantees and their successors in interest have paid to it taxes upon the entire quantity of land contained within the perimeter of the grant, and *whether these taxes were for mere possession or upon the land itself* THE OWNERS WERE COMPELLED TO PAY THE WHOLE TAX IN ORDER TO PROTECT ANY TITLE WHICH THEY MIGHT HAVE TO ANY PART OF SAID LAND; and yet during this entire period of time the United States failed to provide any tribunal IN WHICH THE OWNER OF THE GRANT COULD PROTECT HIS RIGHT OF POSSESSION TO ANY PART OF THE LAND BY VIRTUE OF HIS MEXICAN TITLE.

For nearly half a century the United States has failed to provide any tribunal in which the owner of the grant could protect or maintain his right of possession to any part of the land by virtue of his Mexican title. It has left the owner of the grant upon an exact equality with any squatter, even though he seized a portion of the four sitios of land at the center of the grant, and even though he did this since the Court of Private Land Claims rendered its decree confirming that particular four sitios to these claimants.

The legal title to the entire tract of land is in the claimants, and it is the Government of the United States which is seeking to reform the title in these proceedings, upon the ground that it is entitled to this equitable relief as a subsequent grantee from Mexico of any interest remaining in

that government in this property at the date of the Gadsden treaty.

We have paid more in taxes to this Government upon the land than it paid to Mexico for the land, *and we have received absolutely nothing in return; and we submit that, even if the government of Mexico did have an equitable right to reform the title to the grant, the United States* OUGHT TO BE ESTOPPED BY ITS CONDUCT AND LACHES FROM ENFORCING ANY SUCH RIGHT as the assignee of Mexico.

All Arizona Grant Titles Now Settled.

The total number of grants claimed to exist wholly or partly in Arizona does not exceed a dozen, and the titles to all of them have been finally determined, with the exception of the three or four now pending before this court, and no person can be adversely affected by any modification of the rule upon which the Ely case was decided, provided no distinction can be drawn between that case and the one at bar, upon the ground that the price paid for the land in this case exceeded the prevailing market price and legal minimum value of the entire quantity of land contained within the perimeter of this grant.

Record of Grant.

The original titulo, or patent, to this grant was admitted in evidence without any objection on the part of the Government, and it contains a statement at the end thereof that a "Toma de Razon" (memorandum or note of title) was made on "page 3 of book No. 2."

Only two books of Toma de Razon are found in the archives at the present day, and neither one of them is entitled "No. 2." On the contrary, the first book bears the inscription "No. 1" on the first page, and the last entries contained in it are dated May 13, 1825. It is an insignificant affair,

about six inches or less in length, and less than that in width, and contains only twelve leaves, and only five of these contain writing. The other book is much larger and bears an inscription on the first page stating that it contains notes of titles commencing in the year 1831, and it actually does not contain a single entry of any title issued prior to 1831.

A large number of expedientes of grants are in the archives, which bear a memorandum at the end thereof showing that title was issued between May 13, 1825, and the year 1831. Among them are nine grants beside this one, the titles to which appear to have been issued on May 15, 1825, and eight of these grants are located within the present limits of the State of Sonora, and the validity of the title to no one of them has ever been questioned there, but, on the contrary, their validity has been expressly recognized.

In one of them, the Alamo de Sevilla grant, *the surveyor made the same mistake which was made in this grant*, to wit, he measured sixteen sitios instead of four, and the title to the same has not only been recently recognized as valid by the Mexican government, but the successor in interest of *the original grantee has been permitted* under the law of 1894 *to retain the whole of the grant* by paying an additional price for the excess of quantity contained therein, *although the excess was almost as great as in this case* (Rec., pp. 96, 97).

Status of Colin Cameron and Harvey L. Christie as Parties.

This is an *action in rem* to fix the status of a paper—*i. e.*, the patent or titulo to the grant—and is, in all essential elements, identical with a proceeding in probate to establish the validity or invalidity of a will, and all parties who might have their interest in the property affected, either favorably or adversely, are proper parties to the suit, because they will be bound by the decree.

The act creating the Court of Private Land Claims was approved March 3, 1891, and provides that all persons having imperfect or incomplete titles must file a petition for confirmation of the same within three years from said date. It does not limit the time as to a "perfect" grant, and the lower court held that this is a "perfect" grant.

The original petition of Alfred A. Green, through whom Colin Cameron partially derives title, and through whom Harvey L. Christie partially derives title, was filed in the Court of Private Land Claims on February 27, 1893, more than one year prior to the expiration of the statute of limitations. That court thus acquired jurisdiction over the subject-matter by the law of 1891 and over the persons of Colin Cameron and of Alfred A. Green, so as to be able to render a valid judgment against them and in favor of the United States.

Alfred A. Green was not represented simply because he died before the trial in the court below, and his heirs still vigorously assert an interest in the grant. These facts were unknown to Cameron and Christie prior to the perfection of their appeals.

Moreover, the action is an action *in rem*, and fixes the status of the title paper under which all parties claiming through the original grantee must establish title. Like the probate of a will, the judgment is conclusive against the entire world upon the question of the validity or invalidity of that title paper. Hence it is immaterial by what party claiming an interest under the original title paper the suit was instituted. All parties having an interest may come in or be brought in at any time, pending the proceedings to have their rights determined, in so far as such rights depend upon or might be affected by the status of that original title paper.

Section 7 of the act of 1891 provides:

"That all proceedings subsequent to the filing of said petition shall be conducted, as near as may be, according to

the practice of the courts of equity of the United States," et cetera.

Hence all parties in interest—that is, all parties who may be affected by the result of the proceeding—may be brought in and made parties defendant by an order of court.

The learned counsel for the United States proceeded in accordance with this well-settled principle of equity practice by moving the Court of Private Land Claims, on February 4, 1899, to make a large number of other persons defendants, and to require the petitioner to have them served with a copy of the summons and petition. The order and service were made (Rec., p. 17).

Harvey L. Christie was made a party defendant on motion of the attorney for the United States by an order of court made and entered March 20, 1895 (Rec., pp. 12, 13).

Christie was required to appear, demur, or answer within thirty days. He did so, and was afterwards allowed to withdraw that answer and to substitute another, which he did on February 4, 1899.

Colin Cameron was made a party defendant by Green's petition, and on March 29, 1894, the Court of Private Land Claims made an order granting Cameron sixty days from that date to answer Green's petition, and continued the cause for the term by consent of all parties. The United States made no objection to this order (Rec., p. 4).

Cameron filed an answer within the sixty days, and was afterwards allowed to substitute another answer, which was filed March 25, 1895.

And on February 4, 1899, Colin Cameron was allowed to file another answer without objection by the Government (Rec., pp. 8–12).

And on February 4, 1899, Harvey L. Christie was allowed to file another answer without objection by the United States (Rec., pp. 12–17).

And on February 4, 1899, by permission of the court,

Colin Cameron was allowed to withdraw his demurrer on file and to file an amended answer, which he did on that day, without objection by the United States (Rec., p. 17).

And thereupon the United States proceeded to a trial of the case upon its merits, without any objection to the appearance of Colin Cameron or Harvey L. Christie (Rec., pp. 17, 18).

Hence, the Government is precluded from raising any question as to the right of Cameron or Christie to appear in said action, except upon jurisdictional grounds. The limitation of time within which the action must be commenced can be waived by the United States, and is waived, unless pleaded, like any other statute of limitations. It is in no sense a limitation upon the power or jurisdiction of the court over the subject-matter.

The jurisdiction of the court is defined by sections 7 and 13 of the act of 1891. Section 7 provides, among other things.

"That the court shall have full power and authority by final decree to settle and determine the question of the validity of the title and the boundaries, according to the law of nations and stipulations of the treaties concluded between the United States and the Republic of Mexico," et cetera.

And a petition having been filed by any claimant, the subject-matter of which is the validity or invalidity of a Mexican title to land within the area of the Gadsden purchase, and some party having an actual interest in said title, so that he would be affected by a judgment pro or con, having been made a party to the suit, and having appeared therein, the jurisdiction of the court over the subject-matter is complete, and the only limitation upon its power to render judgment is found in section 13 of the act of 1891, in part as follows:

"No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico, or from any of the States of the Republic of Mexico," et cetera.

Points and Authorities.

I.

The rule of *stare decisis* has no application, because all the land within the perimeter of the grant, as claimed, has at all times been reserved from entry by the Government, and hence no person can be injured if a decision confirming this grant to the boundaries is considered a change from the rule laid down in the Ely case, and because all the Arizona grants have now been finally settled, with the exception of the three or four now pending on appeal in this court.

II.

This case differs radically from the Ely, Maish, Perrin, and all other Arizona grant cases heretofore decided by this court, because in each of those cases the Government received from the grantee only the prevailing market price, which in every instance was only the legal minimum rate fixed by law, or an insignificant amount more than that, for the land;

Whereas *in this case the Government received more than four times the prevailing market price and legal rate for the sixteen sitios of land* which would have been included in the survey as made if the measurements had been correct, and the entire quantity of land contained within the perimeter of the grant is only *twice* as large as the area indicated by the survey; and

Whereas *in this case the Government received more than one and six-tenths times the prevailing market price and legal rate for the entire quantity and quality of the land which is contained within the boundaries of the grant as described in the title papers.*

Occupation was an additional important, if not paramount, consideration, and proof of ability to occupy it was a prerequisite

to the grant, and in this case it was occupied at enormous cost of property and great loss of life.

Inadequacy of consideration or fraud in the grantee constitute the potent and essential elements upon which the rule of equity is based, which gives to the grantor the right to a rescission of the conveyance, and the presence of either one of these two elements is an absolutely paramount necessity and prerequisite to the right to a reformation of the title.

In this case both elements are absent. The consideration was full and adequate and there was no fraud in the grantee.

As a plain, human, common-sense proposition, the government of Mexico had no moral or equitable right to reform the title to this grant, or to recover any surplus lands within its boundaries, or to recover any additional price therefor.

Hence this Government cannot, almost a century subsequent to the sale and conveyance, upon any principle of law, equity, good morals, or natural justice, or in accordance with the principles of international law or within the spirit or even the letter of the Gadsden treaty, enforce a forfeiture of about eight-ninths of this grant and leave to the grantee only the remaining one-ninth thereof—and that mess of pottage to be carved out of the most worthless portion of the land.

III.

Mistakes in surveys were not confined to Spain and Mexico, but were equally common in the American colonies in the early days, and laws authorizing the surplus within a grant to be acquired by third parties existed in Virginia and were identical in principle with those of Mexico.

Notwithstanding the fact that the law permitted third parties to acquire the surplus within a grant in Virginia, it

was always held that the grantee acquired the legal title to the boundaries by the conveyance, and that until he rejected the surplus and alloted the same, or until it was divested by a judicial decree, he had an equal right to every and to each part of the land within his grant.

IV.

The excess in the grant in Mexico, as in Virginia, was "mixed up in its entirety with the *cabide legal*," and the owner had "an equal right to each and every part of the land within the boundaries described in the title papers," and the *cabide legal* was not a specific and identifiable portion of the tract of land included in the survey, but simply means the quantity of such tract of land to which the owner had an indefeasible title—*i. e.*, a title which is not only *not void*, but which is *not even voidable upon any ground*, by suit or otherwise, at the instance of the Government. As to the excess, his title *may be voidable*—*i. e.*, defeasible—but *it is not void*, and the legal title which is vested in him to the excess *can only be defeated by a judicial proceeding to forfeit the excess*, and that requires a cancellation of the entire old title and a new survey, and *the issuance to him of a new title to the land within such new survey.*

V.

"Under our form of government it is elementary that all power to reform a patent by officers of the Land Department vanishes the moment the patent has been executed, and that all irregularities on the part of the officers intrusted with the preliminary proceedings are wiped out, and that for such irregularities prior to the actual grant the Government, and not the individual, must bear the consequences."

U. S. *vs.* Arredondo, 6 Peters, 751.

"The reason of this rule is that it is the grant, and not the preliminaries, which passes legal title to the land."

Colson *vs.* Lewis, 2 Wheat., 378.

"When power is given to subordinate officers, their action upon the premises is binding on the Government. The only question which can arise is power in the officer or fraud in the parties."

Belcher *vs.* Lynn, 24 Howard, 508.

"When the law has appointed a special tribunal to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusively upon all others."

Johnson *vs.* Townslev, 13 Wall., 72.

VI.

In Mexico the judicial power to reform titles to land was vested in the land officers of the government instead of in courts, but those officers were authorized to proceed in accordance with equitable principles, usages, and customs, except in so far as these were modified by express statutory laws.

And the same principles of law and equity in regard to mere irregularities were applied by the land officers in Mexico when acting as judges in proceedings to annul or reform titles to lands, as are applied by the courts in this country in similar proceedings.

Hornsby *vs.* U. S., 10 Wall., 237.

VII.

The grant is not void because it appears upon the face of the proceedings that sixteen sitios were surveyed, because it also appears upon the face of the proceedings that the grant was made to more than four persons, or at least it does not

affirmatively appear that it was made to less than four persons, and the granting officer had power to grant more than four sitios of land in one tract, provided the total amount thereof did not exceed four sitios for each grantee.

VIII.

The grant was not void because it appears upon the face of the proceedings that sixteen sitios were appraised as only four sitios, because it also appears on the face of the proceedings that the purchase price exceeded the legal rate and appraised value of the best land within the grant for each and every one of such sixteen sitios, and hence that the government could have suffered no substantial injury from this irregularity in the preliminary proceedings to the grant.

IX.

"All lands are *supposed* to be *actually surveyed*, and the *intention of the grant* is to convey the land *according to that actual survey*."

The *reason* for the rule that quantity must yield to courses and distances, and the latter to fixed monuments and natural landmarks, is that the *intent* of the parties to the conveyance must prevail, and it is a *presumption of law* that the minds of the parties met upon the fixed monuments and natural landmarks, *because* mistakes are much *more probable and frequent* in estimating quantity or in measuring courses and distances than in fixed monuments or natural landmarks which can be described and designated so as to be ascertained with accuracy.

The *intent* of the parties in a conveyance between a State and an individual must be construed according to the same

principles of law which are applied to conveyances between individuals.

Huidekoper's Lessee *vs.* Douglass, 3 Cranch, 1.

X.

This cannot be a grant *of quantity only*, because if the survey included only three sitios and the quantity specified in the grant was four sitios, title would vest in the grantee only to the area of land actually contained in the survey, and this would make the rule unequal and unjust.

And if it is a grant of quantity only, it necessarily becomes a mere "floating grant" (*i. e.*, in effect a land warrant or land script, entitling the owner to have that specific quantity of land subsequently surveyed and the possession thereof delivered to him), and this would make the laws, requiring a prior survey of the land to be sold and a prior appraisement of the land surveyed, wholly inoperative and of no force or effect whatsoever; whereas a sale of land in Sonora without a prior survey, to delineate and mark upon the ground the land intended to be sold, would obviously have been void for want of power in the officer to make the grant.

In "floating grants" the title did not vest in the grantee to any specific land by the issuance of the title papers, but the subsequent survey and delivery of possession vested the title in the grantee to that specific piece of land; and the prior survey and delivery of possession must have had the same effect in the class of grants in the case at bar when followed by the issuance of the title papers, based upon the payment for the land.

In neither case was the Government concluded by the survey and delivery of possession from annulling or reforming the title upon equitable principles for mistakes in the survey or fraud in the parties.

XI.

The rule for the construction of grants in Mexico, and under the civil law generally, including the modified form thereof adopted in Louisiana, is identical with the rule of the common law, and under that rule this was a grant by specific boundaries and not a grant of quantity only.

XII.

The government of Mexico possessed the same right as an individual grantor (as does this Government) to recover an additional price for any excess within the grant, *if there was a partial failure of consideration*, and in the event of a default in the payment thereof, after the amount had been ascertained by a judicial decree, it had the right to a reformation of the conveyance.

The principles upon which this right was based are universally recognized in conveyances between individuals in Mexico, as well as in England and all the States of the United States.

XIII.

In Mexico the purchaser had a reciprocal right to recover back from the government a proportional part of the price paid if a resurvey of the grant was ordered upon the ground that the survey included more land than the granting officer was authorized to sell to the grantee or grantees. Has this court jurisdiction in this proceeding to decree a repayment to us of the excess in price paid by the grantee owing to the mistake of surveyor representing the Mexican government? *Will it do less?*

XIV.

A grant is complete and perfect notwithstanding the fact that it contains a large excess within its boundaries, even if this excess is due to fraud or mistake on the part of the surveyor, and it is voidable merely, and not void; and it therefore vests the title to the entire tract in the grantee.

White *vs.* Burnley, 20 How., 235.

Taylor *vs.* Brown, 5 Cranch., 234.

Dissenting opinion of Justice Sluss, of the Court of Private Land Claims, in the case of The Arivaca Land and Cattle Co., appellant, *vs.* U. S. *et al.*, No. 153, Oct. term, 1901, of this court.

Sturgeon *vs.* Floyd, 3 Richardson (S. C.), 90.

Mitchell *vs.* Smale, 140 U. S., 374.

The first two cases are conclusive upon all the questions of law involved in this case and between them involve all the facts and all the controlling principles of law applicable thereto.

XV.

The grant was complete and perfect when the title paper was issued, and the grantee could not be divested of his title to any part of the land so granted, except by a judicial proceeding.

White *vs* Burnley, 20 How., 235.

"The divestiture of title once legally vested is a judicial proceeding."

Camou *vs.* U. S., 171 U. S., 220.

XVI.

Great excesses in grants were universal in the State of Sonora and arose from the ignorance of the surveyors and the semi-civilized condition of the country, and no presumption of fraud in the grantee can be inferred therefrom.

Great excesses in grants were not unknown in this country, either; but no instance is known where the State has interfered by suit to reform a land patent solely for excess of quantity. The question here is not of reform; it is of original nullity.

White *vs.* Burnley, 20 How., 235.

XVII.

The law of the State of Sonora of 1835 operated as a legislative grant and cured any defects which may have existed in the title to this grant and confirmed the title of the grantee to the boundaries and left in the government of Mexico a mere right of action to recover an additional price upon equitable principles, or to reform the title in default of such payment, after the amount thereof was ascertained by a judicial decree. Its effect is just the same as a law in the same language passed by Congress prior to the act creating the Court of Private Land Claims would be.

And in the absence of a constitutional prohibition against the impairment of a contract, and upon principles of natural justice, this law could not be repealed so as to affect the vested rights of the grantee.

Terrett *et al. vs.* Taylor, 9 Cranch, 44.

Fletcher *vs.* Peck, 6 Cranch, 177.

But if this law did not operate as a legislative grant, it at least vested a valuable right of property and not a mere privilege. If the right to retain the whole and to pay for

the excess is a valuable property right in a conveyance between individuals, why is it not equally so in a conveyance between the government and an individual? And if it is a right of property, it is protected by the treaty, as the term property includes every species of title, inchoate or complete.

Soulard *vs.* U. S., 4 Pet., 511.
Delassus *vs.* U. S., 9 Pet., 131.

XVIII.

A legislative confirmation of a claim to land is a recognition of the validity of such claim and operates as effectually as a grant or quitclaim from the Government.

Langdeau *vs.* Hanes, 21 Wall., 521.

"The rule may be stated as a general one in respect to legislative grants in this country, that such grants should be construed in favor of the grantee, and in such a manner as to give them a full and liberal operation, so as to carry out the legislative intent where that can be ascertained."

Washburn on Real Property, vol. 3 (4th ed.), p. 190.

XIX.

No new or additional consideration is required to support a ratification or confirmation.

Drakeley *vs.* Gregg, 8 Wall., 242.

XX.

At the time Sonora passed the law of May 12, 1835, she had full power over public lands within the borders of the State, but at the time she passed the law of May 14, 1852, she had no power or authority to enact any law on this subject, because the control of the public lands within the States

had been resumed by the National Government in 1836 and was never relinquished by it at any time from that date until the present time, and said law could not have the effect of divesting the title to the excess within the grant, as the grantees were never dispossessed prior to the Gadsden treaty, and a mere declaration of law cannot have that effect, as it requires a judicial proceeding to divest tittle once legally vested.

XXI.

This court has no power to reform the title or to forfeit any part of the grant in this proceeding. It can proceed only in accordance with the Constitution and laws of this country in enforcing any affirmative relief to which the United States claims it is entitled, and it is only in determining what rights of property were vested in the grantee at the date of the Gadsden treaty that it may inquire into the laws, customs, and usages of Mexico.

White *vs.* Burnley, 20 How., 235.

The law of Sonora of May 14, 1852, merely prescribes a statutory remedy which could have been pursued by the government of Mexico prior to the treaty, *and it does not measure the property rights of the grantee unless action was taken and a decree had under it.*

For instance, if the excess within the grant does not amount to the third part of the land within the boundaries, this court could not take proof as to whether these grantees have sufficient means for stocking the excess, and it could not adjudicate them to us at the rates which were in force in Mexico at that time.

Counsel for the Government themselves exhaustively argue to this effect.

XXII.

This court has jurisdiction to determine only two questions: First, that the grant is valid or invalid, and, incidentally, whether it vested in the grantee the legal or the equitable title to any specific piece of land; and, second, where are the boundaries located which delineate and mark out that specific tract of land to which either the legal *or* the equitable title was vested in the grantee by the grant.

The first is a question of law, and the second is a question of fact.

Under the first question, if the grant was *absolutely void*, this court may so determine, and that ends the proceeding; but if it was *merely voidable*, and a question is thus raised as to what equitable rights the government of Mexico might have had to reform the title at the date of the Gadsden treaty, had the land remained under its dominion, that question can only be considered in another action brought for that express purpose, in a court having jurisdiction of the same.

XXIII.

Mexico never exercised her right, if she had any, to avoid this grant prior to the Gadsden treaty, and she might never have chosen to do so had the land remained under her dominion.

If her officers had not proceeded to do so prior to the law of 1863, they could not thereafter have proceeded in accordance with the law of 1852, even if that law was valid, and they might never have proceeded at all, in view of the fact that the price received by the Government exceeded the just value of all the land within the boundaries of the grant.

Upon what theory, therefore, will this Government now proceed to forfeit any part of this grant?

She must be guided in such a proceeding by an enlightened policy of good morals, and by at least the highest principles of equity and of natural justice that have ever been recognized by the government of Mexico at any period of her history in such proceedings.

XXIV.

Colin Cameron and Harvey L. Christie are proper parties to this action and have a legal standing in the proceedings.

XXV.

The grant was sufficiently recorded in the archives of Mexico.

Opinion of the Court of Private Land Claims in this case.

Ely *vs.* U. S., 171 U. S., 220.

The boundaries of the grant are fully established by a great preponderance of evidence at the specific points claimed by the petitioners, Cameron and Christie.

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ARGUMENT.

Gross mistakes in surveys of land and in the actual quantity contained in grants and patents based thereon were not confined to Mexico, but, on the contrary, were very common in the American colonies, and in at least one of them, to wit, Virginia, laws were passed providing for the acquisition of the surplus in a grant by other persons; but it was never supposed that by reason of this law the grant or patent did not vest in the grantee the legal title to the entire tract of land within the boundaries described in his title papers, nor was it ever supposed that by reason of such laws the grant did not vest in the grantee an equal right to each and every part of the land contained within his grant until he rejected the surplus himself and allotted it in such part of the patent as he pleased.

In Taylor *vs.* Brown, 5 Cranch, 234, Chief Justice Marshall, speaking for this court, says:

"It is a fact of universal notoriety in Virginia not only that the old military surveys, but that the old patents of that country, generally contain a greater quantity of land than the patents call for. The ancient law of Virginia notices this fact and provides for the case. It prescribes THE MANNER IN WHICH THIS SURPLUS MAY BE ACQUIRED BY OTHER PERSONS, and it is worthy of notice that THE PATENTEE MUST HIMSELF REJECT THE SURPLUS BEFORE IT CAN BE ACQUIRED BY ANOTHER, and, after having so rejected it, he has the election to allot it in such part of the patent as he please."

"The survey is an appropriation of a certain quantity of land by metes and bounds, plainly marked by an officer appointed by the government for that purpose, and it would seem that the government received his plat and certificate as full evidence of the correctness of the survey. THIS BEING THE CASE, it is admitted by the government to be an appropriation of the land it covers, and it is difficult to discern a rule by which THE SURVEY could be reduced on a

caveat by the owner of an interfering survey, unless the entry on which it was made was in such terms that the excess might be considered as surveyed contrary to location."

"FOR TO EVERY AND TO EACH PART OF THE LAND SURVEYED ITS OWNER HAS AN EQUAL RIGHT."

"It is proper to premise that there is but one species of cases in which any court of justice is authorized by our land law to divest the owner of the survey of the surplus included within its boundaries, namely, when the survey was made posterior to an entry made by another person on the same land; and TO DO MORE WOULD BE UNEQUAL AND UNJUST, inasmuch as A SURVEY WHICH IS TOO SMALL CANNOT BE ENLARGED."

The foregoing language was used in a case in which the warrant under which the survey was made was for two thousand acres, and the survey included three thousand and twenty-five acres.

The law of Virginia, above referred to, is identical in some respects with the law of the State of Sonora of 1852, and particularly as to the right of the patentee to elect to allot the surplus in such part of the patent as he pleases.

GRANT VESTED LEGAL TITLE TO ALL LAND WITHIN BOUNDARIES, VOIDABLE MERELY AND NOT VOID.

THE GRANT WAS VOIDABLE FOR THE EXCESS ON CERTAIN CONDITIONS UNDER THE LAWS OF SPAIN AND MEXICO, BUT IT WAS A GRANT BY SPECIFIC BOUNDARIES AND VESTED THE LEGAL TITLE AND FEE TO ALL THE LANDS WITHIN ITS PERIMETER IN THE GRANTEE, DESPITE THE FACT THAT QUANTITY WAS OF THE ESSENCE OF THE CONTRACT. THE RULES OF THE COMMON LAW AS APPLIED IN ENGLAND AND THE UNITED STATES AND THE RULES OF THE CIVIL LAW AS APPLIED IN SPAIN AND MEXICO AND UNDER A MODIFIED FORM IN LOUISIANA ARE IDENTICAL IN THESE RESPECTS IN CONVEYANCES

"Whether such patent conveyed a valid title or not it divested the title of the United States so that the patentee or his grantees being in possession under claim and color of title, the statute of limitations began to run in their favor."

Bicknell *vs.* Comstock, 113 U. S., 149.

FROM THE GOVERNMENT TO AN INDIVIDUAL AS WELL AS IN CONVEYANCES BETWEEN INDIVIDUALS.

IN MEXICO, BETWEEN INDIVIDUALS, THE RULE IS IDENTICAL WITH THAT OF THE COMMON LAW—THAT IS TO SAY, IF A SALE OF REAL PROPERTY IS MADE FOR A FIXED PRICE OR LUMP SUM AND WITHOUT ESTIMATING SPECIALLY THEIR PARTS OR MEASURES, THERE SHALL BE NO GROUND FOR A RESCISSION, ALTHOUGH IN THE DELIVERY THERE SHOULD BE A DEFAULT OR EXCESS.

Hall's Mexican Law, p. 574, sections 2106, 2107, 2108, 2109, and 2110.

In this connection it is worthy of notice that in Mexico, as between individuals, the vendor had a right to recover an additional purchase price, even when the sale was not made BY ESTIMATING SPECIFICALLY THE PARTS OF MEASURES, if it afterwards transpired that the sale was made for less than one-half THE JUST PRICE OF THE GRANT AT THE TIME OF THE SALE, and if the vendee would not pay the balance of what IT WAS REALLY WORTH AT THE TIME OF THE SALE, after the amount thereof had been ascertained by a judicial decree, the seller was entitled to a rescission of the conveyance upon repaying to the vendee the purchase-money which he had received; but IN NO EVENT COULD THE VENDOR RESCIND HIS CONTRACT OF CONVEYANCE OR RECOVER BACK ANY PART OF THE PROPERTY, *if the vendee was willing to pay the additional price.*

Hall's Mexican Law, p. 478.

It is also worthy of notice that as between individuals in Mexico, if the vendor wishes to sell his property, BUT WAS IGNORANT OF ITS VALUE, HAVING NEVER SEEN IT, AND IF THE VENDEE ACTED FRAUDULENTLY BY CONCEALING SOMETHING FROM THE VENDOR AT THE TIME THE VENDEE INDUCED THE VENDOR TO MAKE THE SALE, THE VENDOR COULD OBLIGE THE VENDEE TO INDEMNIFY HIM FOR THE FRAUD PRACTICED UPON

HIM BY PAYING TO THE VENDOR THE JUST PRICE FOR THE THING SOLD, BUT IN NO EVENT WAS THE VENDOR ENTITLED TO A RESCISSION OF THE SALE UNLESS THE VENDEE NEGLECTED OR REFUSED TO PAY THE AMOUNT OF SUCH DAMAGES TO THE VENDOR AFTER THE SAME HAD BEEN ASCERTAINED BY A JUDICIAL DECREE.

Hall's Mexican Law, pp. 478 and 479.

And it is still more worthy of notice that as between individuals the vendor had no right to rescind the conveyance after the delivery of the property for want of payment of the price, even if the deed expressly provided that if the price was not paid at the time agreed a dissolution should take place. On the contrary, in such case the purchaser had the absolute right to make the payment, even after the expiration of the time fixed therefor in the contract or conveyance, unless that right had been cut off by an injunction from a court of competent jurisdiction in a judicial proceeding instituted expressly for that purpose.

Hall's Mexican Law, sections 2125 and 2126, p. 577.

APPLYING THESE RULES AND PRINCIPLES OF LAW AS THEY EXISTED IN SPAIN AND MEXICO BETWEEN INDIVIDUALS FROM TIME IMMEMORIAL, IN SO FAR AS OUR MODEST RESEARCHES HAVE THROWN ANY LIGHT ON THE SUBJECT, WE CAN REACH NO OTHER CONCLUSION THAN THAT THE CEDULA OF 1754 AND THE LAW OF SONORA OF MAY 12, 1835, WERE MERE STATUTORY DECLARATIONS ESTABLISHING THE RULE OF THE CIVIL LAW OF SPAIN AND MEXICO, AS IT EXISTED BETWEEN INDIVIDUALS, AS THE JUST MEASURE OF THE RECIPROCAL RIGHTS OF THE GRANTOR AND GRANTEE WHERE THE SALE WAS BETWEEN THE GOVERNMENT AND AN INDIVIDUAL AND WAS FOR A VALUABLE CONSIDERATION.

THE ONLY DIFFERENCE WHICH SEEMS TO EXIST BETWEEN SUCH A SALE AND ONE BETWEEN TWO INDIVIDUALS IS THAT THE RIGHTS OF THE GOVERNMENT WERE NOT CUT OFF OR IN ANY WAY IMPAIRED BY LACHES, WHEREAS THOSE OF AN INDIVIDUAL MIGHT BE. The only additional effect of the cedula of 1754 and of the law of Sonora of May 12, 1835, was to CONFIRM and validate all invalid grants then existing or which might thereafter be made—at least as to mere irregularities and mistakes on the part of its officers—subject to rescission by judicial proceedings if so excessive as to amount to ACTUAL FRAUD by construction, and the statute left this question to be determined by the well-settled general principles of equity. It is to be noted that the cedula of 1754 expressly uses the term "CONFIRMATION," and we shall presently see that the law of Sonora of 1835 was a statute of peace, enacted to quiet titles by confirming all existing grants to their boundaries.

IT IS A UNIVERSAL RULE OF LAW IN ENGLAND, THE UNITED STATES, AND MEXICO (AT LEAST AS BETWEEN INDIVIDUALS IN THE LAST-NAMED COUNTRY) THAT IN ALL CASES WHERE QUANTITY IS ACTUALLY OF THE ESSENCE OF THE CONTRACT OF SALE, AND WHERE NEITHER THE PURCHASER NOR THE SELLER IS ESTOPPED BY SOMETHING APPEARING IN THE DEED ITSELF by which the certain rules of law require the contract to be construed as embodying a waiver of the reciprocal rights of the parties in regard to the quantity, the *purchaser* can recover *from the seller* the value of any deficiency of quantity in the grant, or can, AT HIS OPTION, rescind the contract and recover the purchase-money already paid on it by him. THE SELLER, however, only has the right TO RECOVER THE VALUE OF ANY EXCESS OF LAND which may be included in the conveyance, WITHOUT ANY RIGHT TO A REFORMATION OF THE DEED, OR TO RECOVER ANY PARTICULAR PORTION OF THE TRACT CONVEYED, unless THE PURCHASER NEGLECTS OR REFUSES TO PAY THE ADDITIONAL

PRICE AFTER THE AMOUNT THEREOF HAS BEEN DETERMINED BY A JUDICIAL DECREE.

Washburn on Real Property, vol. 3 (4th ed.), pp. 491 to 495.
Powell *vs.* Clark, 5 Mass., 356.
Noble *et al. vs.* Googins, 99 Mass., 231.
Thredgill *vs.* Pintard, 12 Howard, 35.
Tarbell *vs.* Bowman, 103 Mass., 343.

But it has never been supposed that this right in a seller to recover an additional price for a surplus or excess when quantity is of the essence of the contract and when he is not estopped, and this right to have the conveyance reformed if the purchaser refuses or neglects to pay the additional price after the amount has been duly ascertained by a judicial decree, or that this right in a seller to avoid the sale by returning the purchase price already received if the purchaser refuses to pay the additional price after such judicial ascertainment of the amount, operates to in any way modify the rule of law that when metes and bounds are specified in the conveyance the seller is conclusively presumed *by certain rules of law* to have INTENDED *to convey the entire tract of land so described*, because the intent of the parties must control, and the presumption must prevail that the minds of the parties met as to the tract of land to be conveyed, upon the natural landmarks and artificial monuments described in the title papers, as these must be presumed to have arrested and fixed their attention, BECAUSE it is much more PROBABLE that the parties might have made a mistake as to quantity than as to courses and distances, or as to courses and distances than as to natural landmarks or permanent artificial monuments.

In construing the language of this grant, in order to reach the *intent* of the parties we must bear in mind the one fact of paramount importance, that according to the laws then in force the granting officer had no power to make a sale

of an unlocated quantity of land within outboundaries, and hence if he attempted or *intended* to do so the grant so made would be void. We must bear in mind the further fact that it was the universal custom in that country for the petitioner to himself *name* his ranch, either in his petition or *at the time of the survey.* In this case we see from the expediente that Bustillo merely petitioned for land on the north and on the east of the presidio of Santa Cruz. The place *had no name* until he gave it one *at the time of the survey.* He then fixed the place from which he wanted the surveyor to commence the survey, and he then gave to the tract of land to be surveyed the name "San Rafael" de la Zanja—*i. e.*, of the ditch—calling it that, as the evidence shows, because there was a natural ditch near that center which was generally spoken of as "La Zanja."

Sometimes the petitioner adopted a name by which the locality had been previously known, but more frequently the name was his own arbitrary choice, and thereafter that name was always applied by people generally to that ranch. If a Mexican says he is going to "Babacomari," or to "Sonoita," or to "Canoa," or to "Agua Prieta," or to "San Rafael" de la Valle, or to "San Rafael" de la Zanja, he means that he is going to the ranch of that name. This is a universal mode of expression among both the educated and uneducated Mexicans, and every ranch in Sonora has a name which applies solely to the tract of land embraced within the grant. Of course, when the owner has a home upon the grant the Mexicans used the name also to indicate that home; hence when he says he is going to "San Rafael" de la Zanja, he means that he is going to the house occupied at that particular time by the owner of the grant. The "*Toma de Razon*" of the grant was always made on this theory by the Mexican officials.

Referring now to the expediente of this grant, we find that the surveyor proceeded to measure and locate a tract of land to be appraised and sold as four sitios, and that in doing so

he obviously measured at least sixteen sitios, and after running a line around from corner to corner to inclose the tract he had surveyed, he concludes by saying:

"*With which measurements was formed the square of the four sitios registered by Don Manuel Bustillo* for raising cattle; and *as such he accepted them*, being informed that in due time he was to establish his boundaries with monuments of lime and rough stone as required by law."

Referring again to the expediente of this grant, we find in the petition a request that the intendente be pleased to give the necessary order for the *measurement of the said land*—that is, for the measurement of a tract of land which the petitioner desired to purchase. Here is the language: "Wherefore, I pray your honor that for *the measurement of* "*the said tract of land* you will be pleased to issue the neces- "sary orders to the proper officers, and that the commis- "sioner may take into consideration in *its* valuation that *the* "*tract of land asked for* borders upon the country of the "Apaches, who are constantly hostile." Immediately after the petition we find an order that "the commandant of the "company of Santa Cruz will proceed to *the measurement of* "*the lands petitioned for*, summoning the adjoining land- "owners, and appointing experts for *the valuation of the said* "*lands.*

Can anybody doubt that it was the intention of the government to survey and appraise the identical land which it intended to sell? And again, in the "act of acceptance" by the commissioner appointed to survey we find the following: "I ordered that the neighboring land-owners be sum- "moned, and accompanied by the necessary officers, who "are named, I appoint tomorrow as the day for the com- "mencement *of the measurements of the four sitios* for rais- "ing cattle in the place called La Zanja, as before stated." And again, in the notification to the interested parties, the expediente says: "I, the said commissioner, for the purpose

"of proceeding to *the measurements of said lands*, appointed "as officials to make the same," etc.

And in the proceedings of valuation of the land we find the following: "Whereupon I, the said commissioner, for "the purpose of *valuing the lands measured by me*, for Don "Manuel Bustillo, *which lands are* situated at San Rafael de "la Zanja, *composed of cuatro sitios para cria de ganado mayor*, "said that I would appoint and did appoint, as such ap- "praisers," etc.

Will it be argued by counsel for the Government that the appraised value of the lands which were to be sold was not *the appraised value of the land which was actually surveyed and measured?* How can language make it plainer? The commissioner says he appointed appraisers to value "*the lands measured by me.*" Did they value some other and different lands from those which were measured by the commissioner, or did they value or appraise only a part of the lands which had been measured by the commissioner? Are we to so argue simply because the commissioner tells us that *the lands measured by him* were composed of four sitios? And again, in the decree of publication for thirty days we find the following: "I, the said commissioner, in view of the "foregoing *proceedings of measurement and valuation of the* "*land of the San Rafael de la Zanja*, comprising four sitios, I "said that publication should be made for thirty consecutive "days," etc.

Here we have the statement that he had *measured and valued the lands which had been petitioned for*, and that *the lands as measured contained four sitios.*

And in the first offer of sale we find the following: "The "lands *of the place called San Rafael de la Zanja*, situated "within this jurisdiction *and containing four sitios* for raising "cattle, *surveyed in favor of Don Manuel Bustillo*, of this town, "*appraised* at two hundred and ten dollars, are for sale on "account of the public treasury," etc.

What does this language mean, except that the auctioneer

was offering for sale the particular tract of land which was surveyed in favor of Don Manuel Bustillo, and the particular tract of land which had been valued or appraised at two hundred and ten dollars, and which tract so surveyed had been named "San Rafael de la Zanja" by Bustillo? We have already seen that the tract which was appraised was the tract which had been surveyed, and the tract which was surveyed was the tract which was named, and hence it is quite clear that the tract offered for sale was the tract which had been surveyed. No other tract than the tract which had been surveyed, and which, after being surveyed had been appraised, could be sold without violating the laws relating to such sales, and hence it must be clear that the *intent* of the Government was to sell the tract which had been surveyed and marked upon the ground and which is described in the expediente, *and that Romero believed he was bidding for that surveyed tract and based the amount of his bid on that belief.*

Then follows the testimony of the witnesses that Don Manuel Bustillo possesses sufficient means "to stock the "place of San Rafael de la Zanja which had been petitioned "for by him." The place petitioned for was surveyed to him, and the place surveyed was appraised, and the place surveyed and appraised was sold, and hence the testimony of the witnesses all goes to the fact that Don Manuel Bustillo possesses sufficient means to stock the place which had been marked or surveyed, or, in other words, to stock the tract of land which is specifically described in the expediente.

And again, the report of the promotor fiscal states that he "has examined with much care this expediente in rela- "tion to the *lands surveyed* for Don Manuel Bustillo * * * "at the place named San Rafael de la Zanja, in the same "jurisdiction, *from which survey resulted* cuatro sitios para "cria de ganado mayor, *which* were valued by two experts, "who for that purpose were appointed, at the rate of $60.00 "for three thereof, for the reason that they had running

"water, and the fourth, which was without running water, "and which could be watered by wells, at $30.00 which two "sums together make two hundred and ten dollars; and "*which land* having been offered for sale at public auction, "for thirty consecutive days," etc.

What idea does this language convey to the ordinary mind? Does it not say that the attorney general has examined the proceedings relating to *the survey of the tract of land which Bustillo petitioned for*, and that *said tract of land was surveyed* at the place named San Rafael de la Zanja, and that *the land so surveyed* is of the area of four sitios, and that *the land so surveyed* was valued at $210, because on three parts of *the land so surveyed* running water was found, and that on another part of *the land so surveyed* water could only be secured by wells? And does it not further say that *the land which had been surveyed* had been offered for sale at public auction for thirty consecutive days?

Bearing in mind the laws and customs of the country, if this language does not establish the fact that the Government intended to sell *the land which was surveyed*, then words no longer convey any meaning to the human mind. Do counsel for the Government mean to tell us that the attorney general for Mexico intended by this language to say that four sitios of land had been offered for sale at public auction, which had never been identified or marked upon the ground, and that the intent to sell a quantity of land, and not a specific tract of land, is apparent on the face of these proceedings? *Quantity is an abstract idea, and land is a concrete thing.* It was the *thing* which was to be sold—*i. e., the land.* But what particular *land? Obviously the specific piece of land which had been surveyed.* It is impossible to appraise an *abstract idea.* It was the *thing—i. e., the surveyed tract of land—which was appraised.*

And again, in the order of sale which was made by the intendente, we find the following:

"In accordance with the report of the promotor fiscal of this intendencia, as shown in the foregoing, let the three public offers of sale be made of *the lands referred to in this expediente*, first summoning the interested party."

What lands were ordered to be sold? Any four sitios of land in the vicinity of "San Rafael de la Zanja" or within certain outboundaries? Certainly not. There was no place of that name prior to the survey. The lands ordered to be sold are those *referred to in the expediente*, to wit, in the report of the promotor fiscal. What lands are referred to in the report of the promotor fiscal? Obviously the lands surveyed for Don Manuel Bustillo, at the place he named "San Rafael de la Zanja," from which measurement resulted four sitios, and which surveyed tract had been appraised at $210.

And again, in the first offer of sale, we find the following: "At the city of Arizpe, on the eighth day of the month of "January, one thousand eight hundred and twenty-two, the "board of sale, composed of the señor intendente *ad interim* "as president thereof, and the members composing the same, "being assembled, for the purpose of making the first offer "of sale of the lands referred to in their proceedings; at the "sound of the drum many persons were assembled at the "office of this intendencia, in the presence of whom the auc-"tioneer, Soreto Salcedo, was ordered to make, and did in "fact make, an offer in a clear voice, saying: 'There are to "'be sold in this board of sale four sitios of land *comprised* "'*in the place named San Rafael de la Zanja*, situated in "'the jurisdiction of the presidio of Santa Cruz, *surveyed in* "'*favor of the one who denounced them*, Don Manuel Bustillo, "'and appraised in the sum of $210.00, being at the rate "'of $60.00 for said three sitios, and the remaining one at "'$30.00.'"

What is the meaning of this language, and what lands were offered for sale? Obviously the lands which had been surveyed for Don Manuel Bustillo and the particular lands

which had been appraised; and, in this connection, I ask, which four sitios out of the thirty-five sitios contained within the boundaries of this grant were appraised and valued by the experts? If the appraisers believed, and we are bound to conclude that they did believe, that only four sitios of land were contained within the boundaries described in the expediente, how is it possible for a person to now declare that those appraisers valued any particular four sitios of land contained within that area?

If they did not appraise some particular four sitios of land within that area, how can it be argued that the sale was of some indefinite and unlocated tract of four sitios of land within said measurements? And again, I say, that obviously *the land offered for sale was the tract which had been measured and surveyed*, and hence that is the land which was sold, and that is the land for which Romero bid $1,212. and that is the land which he purchased.

Next comes the application of Romero for the issuance of title to him "for the lands of San Rafael de la Zanja referred "to in these proceedings." In other words, he petitions for a title to the lands which had been measured, surveyed, appraised, and sold.

Next follows the decree by the intendente, in which we find the following: "The señor intendente *ad interim* of this "province of Sonora and Sinaloa, Don Ignacio de Bustamente, "having examined *the proceedings of survey, appraisement*, "publication, and sale of *the* four sitios of land *comprehended* "*in the place named* 'San Rafael de la Zanja,' situated in the "jurisdiction of the presidio of Santa Cruz, sold to Don "Ramon Romero and the other citizens of the same military "post," etc. If this language does not mean that the tract of land which had been surveyed, and which had been appraised and published, had been sold to Romero, it is idle to attempt to express anything by the medium of words. If we are to conclude that no particular tract of land was sold because it is stated that the tract which was surveyed

and appraised and sold contains four sitos of land, we must find some other medium than words for the expression of ideas. The intendente proceeds to decree "the said land "to the said Don Ramon Romero and the citizens of Santa "Cruz." And he further declares that Romero shall pay into the public treasury the sum of $1,297 six reales and five giems in the following manner: "$1,200.00, *the amount "for which the said land was sold* by the intendencia."

If language means anything, we must construe the words "the said land" as meaning the tract of land which had been measured and surveyed.

The plain intent of the grantor was to convey the particular tract of land which the government had caused to be surveyed. To presume any other intent upon its part is to presume fraud on the part of the government itself. This intent is no less clear, express, and manifest because both parties to the instrument supposed and believed that the tract which had been surveyed contained only four sitios of land instead of thirty-five sitios. This intent is no less clear, express, and conclusive because the government officers ordinarily and usually made mistakes as to the quantity of land contained within each tract which was surveyed by them in accordance with law for the very purpose of making a sale of the particular tract of land so surveyed.

This intent is made still more clear and manifest from the fact that *if the tract of land so surveyed for sale had in any instance actually contained a less quantity of land than that stated in the title papers, the grantee would have secured title only to the tract of land therein described,* and would have had no right of action against the government for a deficiency in the quantity, and the survey could not have been enlarged and no principle of equity would require that it should, *because he clearly based the amount of his bid on his estimate of the value of the tract of land which he knew was contained within the boundaries of the survey.*

This *intent* to convey the particular tract of land which

was measured, and which is described in the granting papers, is no less clear, express, and conclusive because the laws, usages, and customs in force at the time of the grant permitted the government to demand from the grantee an additional payment for any excess of quantity which might afterwards be discovered to exist within the boundaries of the tract of land which had been so measured, surveyed, located, sold, and conveyed.

The right of the government to recover the value of such excess, and to reform the grant if the grantee refused to pay for the same, *is based upon the theory that quantity was of the essence of the contract, and not upon the theory that the granting papers did not pass the legal title to all the lands contained within the boundaries* set forth and described in the expediente, *or that it was not the intent to convey the specific tract of land surveyed.*

Possession was one of the highest evidences of title known to the civil as well as to the common law; and "the survey and possession of a grant are open and public acts and would support the parol evidence of its prior existence and destruction. It would show the knowledge of the officers of the government of the title claimed and their acquiescence in the justice and legality of the claim."

U. S. *vs.* Castro *et al.*, 24 How., 350.

If this principle is true as to the whole and when the record and title are lost or destroyed, why is it not equally potent to at least establish *the intent of the parties* by their practical construction of the meaning of the title papers in this case?

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It is quite clear that, under the Mexican laws, if A sells a tract of land to B, stating in the deed that it contains a certain quantity, and describing the land by metes and bounds, A can recover from B the value of any excess of quantity which may be contained within the boundaries of the tract described in the conveyance, provided that it appears that quantity was of the essence of the contract. That is likewise the law in the United States, and it has been the law in England for 200 years or more. But will it be argued that in such a case the legal title to all the land described in the conveyance did not pass out of A and into B by the delivery of the title papers? Undoubtedly not. The title to the entire tract of land is vested in B, and A merely has an equitable right to recover the value of the excess, and such value must be determined by the rate per unit agreed upon by the parties to the transaction originally, if such fact exists, and otherwise it must be equitably determined.

So, in all these Mexican grants, the title to the entire tract of land which is described in the title papers became vested in the

grantee. I need only refer to the brief of counsel for the Goverment to demonstrate that this is true.

At page 33, section 47, counsel quote article 1, chapter 1, of the Mexican law of 1894, as follows: "The lands dealt "with in this law which are national property shall for the "purpose required be divided into the following categories: "1. Vacant lands. 2. Surplus lands (demasias). 3. Excess "lands. 4. National lands."

Surplus lands (demesias) are defined by this law (article 3), say counsel for the Government, "to be *those held by* "*private persons on primordial title and to a greater extent* "*than specified,* such surplus, however, *being within the* "*boundaries mentioned in the title, and consequently mixed up* "*in its entirety with the area for which a title is held.*"

Justice Miller, in delivering the opinion of the Supreme Court in the Maxwell Land Grant case, 121 U. S., 325, said:

"The phrase 'outboundary' has its proper use in regard "to certain classes of Mexican grants, but it is wholly inap- "plicable and misleading as referring to the one now under "consideration. There is nothing in the language of the "grant, nor in the petition, nor in anything connected with "it, nor in the act of judicial possession, to indicate that "any one had any idea or conception that the grantees "were not to have all the land within the boundaries estab- "lished by that judicial possession."

It seems to us that this language applies with full force to this grant and proceedings now under consideration.

"That a case of excess sufficiently gross could arise to justify a proceeding by suit on the part of the State of Texas (or of the United States) to reform a Spanish grant we do not doubt (U. S. *vs.* Hughes, 11 How., 552). But the question here *is not of reform; it is of original nullity.*"

But even in such a case the right of the government to reform the title *would depend upon equitable principles*, and if it appeared that the mistake of the government's surveyor misled the purchaser into bidding and paying the full value of the entire quantity of land contained within the survey and grant, a reformation certainly could not be had without returning to the grantee the excess of purchase price which he thus paid, and a reformation could not be had even on those terms, unless some strong ground of public policy required it.

And certainly that would not be so in this case, because much larger tracts of land of the same character are held by private parties throughout the United States, without detriment to the public welfare; and it certainly was not the case while the land remained in Mexico, as it belonged to all the residents of the town of Santa Cruz in common, and, if allotted, the quantity to go to each one was very small, and they needed it for their cattle, for grazing purposes, and it was a matter of great importance and of the highest public policy for Mexico to encourage the maintenance of this frontier settlement of Santa Cruz, which was several times destroyed by Indians, and which to a considerable extent prevented the Apache Indians from raiding further south into the interior farming regions of Sonora.

It rested *with the conscience of the political arm of the government in Mexico* as to whether it would *reform a title for excess or not and upon what terms it would do so.*

It likewise rests *with the conscience of the political arm of this Government* as to whether it will *reform the title to Spanish or Mexican grants and upon what terms it will do so.*

And Congress has not yet declared its will in this respect.

This was a "*perfect*" grant at the date of the Gadsden treaty, as we shall presently show, and today *it requires no action on the part of this court* (as it is excluded from the conditional limitations of the act creating the Court of Pri-

vate Land Claims, except in respect to the condition that the patent of confirmation shall exclude the minerals).

So far as the rights of individuals are concerned in construing statutes, treaties, contracts, and written instruments generally, the courts adopt a liberal construction, and if the statute or treaty admits of two constructions, one restrictive of the rights that may be claimed under it and the other liberal as respects such rights, the latter is to be preferred.

1 Kent Com., 174.
Sharkes *vs.* Dupont, 3 Pet., 242.
Hauenstein *vs.* Lynham, 100 U. S., 483.
The Amiable Isabella, 6 Wheat., 1.
U. S. *vs.* Perchman, 7 Pet., 832.
North German Lloyd S. S. Co. *vs.* Hadden, 43 Fed., 20.
U. S. *vs.* Payne, 8 Fed., 892.

"Aside from the duty imposed by the Constitution to respect treaty stipulations (and it may be added to protect private rights of property generally) when they become the subject of judicial proceedings, the court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected; and it would be wanting in proper respect for the intelligence and patriotism of a co-ordinate department of the Government were it to doubt for a moment that these considerations were present in the minds of its members when the legislation in question was enacted."

Chew Heong *vs.* U. S., 112 U. S., 536; opinion by Justice Harlan.

If Congress intended to confer upon the Court of Private Land Claims the right to reform titles to "*perfect*" grants, why were the owners thereof not required to submit their claims to that court? As a matter of fact, were not "*perfect*"—*i. e.*, completed—grants (White *vs.* Burnley, 20 How., 235) omitted from the requirements of the act of 1891 for

submission to the Court of Private Land Claims, because, in the opinion of Congress, such grants require no act of confirmation to enable the owner to protect his title in the courts of ordinary and general jurisdiction? And if the Government of the United States brought suit in a court of general jurisdiction to reform the title to this grant, it would be estopped by its laches in accordance with the principle laid down in the case of U. S. *vs.* Hancock, 133 U. S., 193, where a delay of 15 years in bringing suit to reform a patent for an excessive mistake in the survey upon the ground of fraud and collusion between the surveyor and the grantee was held to bar the United States for laches, and it would be estopped by its conduct in the matter of taxes, as he who asks equity must do equity, and as in such suits the Government is on an exact equality with individuals and is subject to the same rules of law and equity.

U. S. *vs.* Iron Silver Mining Co., 128 U. S., 677.
Maxwell Land Grant case, 121 U. S., 325.

Moreover, the United States in such a suit would be compelled to show an equitable ground for a rescission—*i. e.*, a partial failure of consideration or some other substantial injury arising from the mistake of the surveyor in this grant,—and that we have seen cannot be done; *and it would likewise be required to refund an equitable proportion of the purchase price as a condition precedent to the reformation.* Can this court render such a decree? *Will it do less?*

"*The United States have never sought, by their legislation, to evade the obligation devolved upon them by the treaty of Guadalupe Hidalgo, to protect the rights of property of the inhabitants of the ceded territory, or to discharge it in a narrow and illiberal manner. They have directed their tribunals, in passing upon the rights of the inhabitants, to be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of equity, and the decisions of the Supreme Court, so far as they are applicable. They have not desired the tribunals to conduct their investigations as if the rights of the inhabitants to*

the property which they claim depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just rights which they could have claimed from the government they superseded."

U. S. *vs.* Agricola, 1 Wall., 358.

"All courts ought to feel a disposition to support a grant fairly made for a valuable consideration," says Chief Justice Marshall in Blake *vs.* Doherty, 5 Wheat., 362.

The quantity of the excess contained within the survey does not affect the principle of law involved.

In Taylor *vs.* Brown, 5 Cranch, 251, Chief Justice Marshall says:

"There is but one species of cases in which any court of justice is authorized by our land law to divest the owner of a survey of a surplus included within its boundaries, namely, where the survey was made posterior to an entry made by another party on the same land, and to do more would be unequal and unjust, inasmuch as a survey which is too small cannot be enlarged."

In Mitchell *vs.* Smale, 140 U. S., 374, this court held that the grant was one by specific boundaries and not by quantity, although the grantee had purchased and paid for only four and fifty-three hundredths acres, whereas the grant was in the district of Chicago, containing twenty-five acres additional of dry land outside of the survey, as well as a large area of land under the lake in front of the bank. This additional dry land existed both at the time of the survey and of the sale and patent, thus making an excess in the grant of five and a half times the quantity of land mentioned therein, as to the dry land alone, and thus making the grant more than six times as large as the quantity specified in the title papers, as to the dry land alone.

The language of the patent in this case was "the S. W. fractional quarter of fractional section 20 in township 37,

range 15, in the district of lands subject to sale at Chicago, Illinois, containing 4.53 acres according to the official plat and survey of the said lands returned to the General Land Office by the surveyor general."

The obvious principle involved is that the sale was not one by quantity, because the land which it was intended to convey is identified and severed from the other public lands by the survey, and the particular land so intended to be conveyed is specifically identified by the official plat of the survey, which is on file in the General Land Office.

In what respect does this differ from the sale of the grant in question? What difference is there in legal effect between the language of that patent and the statements contained in the titulo of this grant, which is as follows to wit:

"There is hereby conveyed to Ramon Romero—

"*The lands of the place called San Rafael de la Zanja* (the S. W. fractional quarter of fractional section 20 in township 37 range 15) *situated within this jurisdiction* (in the district of lands subject to sale at Chicago, Illinois) *and containing four sitios for raising cattle* (containing 4.53 acres) *surveyed in favor of Don Manuel Bustillo, of this town* (according to the official plat and survey of the said lands returned to the General Land Office by the surveyor general) *appraised at two hundred and ten dollars.*"

And he might have added, *the record and sworn evidence of which proceedings of survey are attached to and incorporated in and made a part of this titulo, as well as of the original expediente*, which is retained in the archives of this government of Mexico as perpetual evidence of the grant, *and by which expediente and titulo alone can it be ascertained what specific land was appropriated and segregated from the public domain* and sold to Ramon Romero by these proceedings.

The construction placed upon the grant by this court in Mitchell *vs.* Smale has become a rule of property and ought to be overturned only upon very grave and momentous rea-

sons. The reasons for the rule of *stare decisis* apply with full force and vigor.

In the case of Sturgeon *vs.* Floyd, 3 Richardson (S. C.), 90, the quantity called for in the title papers was fourteen thousand nine hundred (14,900) acres, and the actual area contained within the perimeter of the grant was one hundred and thirty-six thousand (136,000) acres, or more than nine times the quantity specified in the title papers, and the court affirmed the grant, which had been made by the State to an individual, as a grant by specific boundaries, and as thus including the entire quantity of land found within the perimeter.

The Maxwell Land Grant case, 121 U. S., 325, is also instructive.

These are mere examples of many cases which could be cited illustrating the universal application of the principle of law for which we contend.

LAND OFFICERS IN MEXICO JUDICIAL OFFICERS.

"UNDER OUR SYSTEM OF GOVERNMENT ONE OFFICER OF THE LAND OFFICE IS NOT COMPETENT TO CANCEL OR ANNUL THE ACT OF HIS PREDECESSOR; THAT IS A JUDICIAL ACT AND REQUIRES THE JUDGMENT OF A COURT."

Stone *vs.* U. S., 2 Wallace, 525.

"Under Spanish and Mexican governments the judiciary had no authority to interfere at all in any case. The political power retained to itself all the power to reform or annul titles."

White *vs.* Burnley, 20 How., 247.

"The tribunal and courts of justice being authorized solely

for applying the laws, shall never interpret the same or suspend their execution."

Constitution of the State of the West, which comprised the present States of Sonora and Sinaloa.

In the letter which was written in 1839 by Jose Maria Mendoza, as Superior Chief of the Treasury of the Department of Sonora, to the Secretary of State of the National Republic, and which appears on pages 83, 84, 85, 86, and 87 of the "official report on the condition of the archives or records of the titles to land grants in Arizona and similar grants in Mexico," compiled by Special Agents Will M. Tipton and Henry O. Flipper, and which was put in evidence by the Government in the Ely case, the following statements occur, and they are undoubtedly correct:

"In the time of the Spanish government, the intendentes were JUDGES, with exclusive jurisdiction over lands, with ample powers under their ordinances and under the instructions of the bureau to decide and adjust matters and causes pertaining thereto and EVEN TO ADMINISTER JUSTICE, AS THEY DID ADMINISTER IT IN THEM, hearing the parties and their attorney general of the treasury, and deciding said causes upon the advice of their ordinary legal advisers;" et cetera. . . . "My predecessor Ignacio Tralles came to believe that said authorities and the treasury exercised judicial functions under those decrees" (*i. e.*, the laws recited in the letter relating to the sales of public lands).

In the official report of the minister of public works to the Chamber of Deputies of Mexico, 1885, pages 9, 10, and 11, in referring to the law of July 22, 1863, the minister says:

"In order to carry on the investigation of said overplus (demasias) it is necessary to comply with all the provisions of said laws of July 23, 1863, and of the 15th of September 1883, FOLLOWING THE JUDICIAL PROCEDURE PROVIDED IN THE SAME. Consequently no kind of abuses can be committed, there being therefore NO CAUSE FOR THE ALARM

AMONG OWNERS WHICH HAS BEEN SPOKEN OF ON THE FLOOR OF THAT CHAMBER."

Even in Mexico we see, therefore, that these laws were looked upon by the owners of grants as acts of confiscation, and yet counsel for the Government urge this court to adopt them as equitable rules for its guidance.

The expediente of this grant begins with the following statement, to wit:

"Whereas article 81 of the ordinance of intendents of the 4th of December, 1786, confers on these magistrates cognizance and jurisdiction of surveys, sales, and adjustments of lands in their respective districts, the tenor of which is literally as follows:

"ART. 81. *The intendents shall also be judges with exclusive jurisdiction over all matters and questions* that arise in the provinces in their districts, *in relation to the sale, adjustment, and distribution of Crown and manorial lands. The holders thereof and those who seek new grants of the same shall set up their rights and make their applications to said intendents who,* after the matter has been duly examined into by an attorney of the royal treasury appointed by themselves, *shall take action thereon in accordance with law* and with the assistance of their ordinary legal advisers. They shall admit appeals to the superior board of the treasury or, should the parties in interest fail to employ that recourse, submit report thereto, together with the original proceedings, when they consider them in condition for the title to be issued. The board shall, after examination thereof, return them either for the title to be issued, if no correction is necessary, or before doing so for such other proceedings as in the opinion of the board are required, with the necessary instructions. In the meantime, and without further delay, the necessary confirmation may be made, which said superior board shall issue at the proper time, proceeding in this matter, as also the intendents, their deputies and others, in accordance with the requirements of the royal instructions of October 15th, 1754, *in so far as they do not conflict with the present instructions,* without losing sight of the wise provisions of the laws therein cited, and of law 9, title XII, Book 4."

In short, the intendents were *judges* clothed with *exclusive jurisdiction to entertain suits to annul or reform titles to land as between the government and its individual grantees.* They were directed, in hearing and determining these suits, to proceed "*in accordance with law;*" but in making "*confirmations*" they were required to proceed in accordance with the requirements of the cedula of 1754, *in so far as those requirements do not conflict with said article 81 of the ordinance of intendents of the 4th of December, 1786.*

In other words, in trying suits to annul or reform titles to land, these judges were instructed by this law to decide such suits "*in accordance with law,*" and not to allow the requirements of said cedula of 1754 to control their actions, except in so far as it did not conflict with these instructions to proceed "*in accordance with law.*"

We must inquire, therefore, as to what was meant by the words "*in accordance with law.*"

In the case of Phelps *vs.* The City of Panama, 1 Wash. Ter., 533, the court said:

"The term *laws* includes not only written expressions of the governing will, but also all other rules of authority and conduct in which the supreme government exhibits, and according to which it exerts, its governmental force."

This definition clearly includes the principles of equity, as well as the usages and customs of the particular country.

In U. S. *vs.* Arredondo, 6 Peters, 714, this court said:

"The courts not only may, but *are bound to notice and respect general customs and usage as the law of the land, equally with the written law, and when clearly proved, they will control the general law.*" * * *

The statutory enactments of Spain, Mexico, and the State of Sonora measured the *remedial rights of the government* and were not intended to define all the rights of the grant owners, or to rigidly restrict the official clothed with the judicial

power to hear and determine suits to reform titles to a strict technical construction of the vested rights of such owners of grants, in accordance with said statutory laws. Those judicial officers were clothed with large discretionary powers in this respect, and could be guided by the principles of equity and the usages and customs of the country, except in so far as such action on their part would conflict with some substantial and expressly reserved right of the government.

Meaning of Cabida Legal.

Cabida legal simply means the amount or quantity of land which is absolutely protected against any attack by the Government to recover an additional price or to divest the title to the same by judicial proceeding on account of any excess in the grant. It does not mean any specific identified or located portion of the land within the perimeter of the grant.

Demasias are defined by article 3, chapter 1, of the Mexican law of 1894 "to be those *held* by private persons on primordial title and to a greater extent than specified, such surplus, however, being within the boundaries mentioned in the title, and consequently *mixed up in its entirety with the area for which a title is held.*

Mr. Orozco, an eminent Mexican legal authority of the present day, in discussing said law of 1894, says:

"We have already said that this overplus (demasias) consists of agrarian quantities which result within A WELL-IDENTIFIED PERIMETER between the area covered (protected against judicial proceedings to divest or to recover an additional price) by title, and the area which THE PERIMETER FIXED BY THE RESPECTIVE TITLES INCLOSES DE FACTO. Thus, for example, if the title concedes 1,000 hectares (2,471 acres) of land within fixed and determined monuments, and upon a new examination of it, it is demonstrated that within those monuments there is not 1,000, but 1,500 hectares (3,706

acres) this excess of 500 hectares (1,235 acres) is what is today called 'national overplus' (demasias nacionales)."

Counsel for the Government ask, "Why is this called 'national overplus' if private property?"

The answer is that it is an equitable right of action in the Government to recover an additional price for the entire tract of land contained within the perimeter of the grant, and in default of the payment by the grantee of that additional price to procure a judicial decree divesting the legal title of the grantee and reinvesting the legal title in the grantor in and to a certain portion of the land within the perimeter of the grant, and vesting in the grantee by a new title the fee and legal title to a specific part of said entire tract of land, according to a new survey of such specific part, and which specific part is to be selected from said entire tract, according to equitable principles, by the officer conducting said judicial procedure for the forfeiture of the remaining portion of the tract or according to the preference expressed by the grantee.

Before the decree of forfeiture is made and entered upon a proceeding which was instituted for that express purpose, in default of the recovery of an additional purchase price, the right of the owner extends "to every and to each part of the land surveyed," and *its owner has an equal right to every and to each part of all the land within the perimeter of the grant, just as we have seen he did under the ancient laws of Virginia.*

The interest of the grantee to the cabida legal is an undivided interest in the entire area of land contained within the perimeter of the grant under every possible conception of his rights which can be logically considered; and an undivided interest in a tract of land always attaches to every possible parcel of the land as well as to the whole thereof with equal effectiveness; and the owner of an undivided interest in a tract of land is seized of a legal title to the whole tract, and hence it is quite clear that the

grant was located within the meaning of the Gadsden treaty at the time of its original purchase by the grantee.

The government of Mexico never pretended that the initial point had any bearing upon the location of the cabida legal. This is clearly shown by the testimony of Mr. Bonillas, and the United States Government has offered no evidence to the contrary. To segregate the surplus under the Mexican laws was, in actual practice as well as in effect, to cancel the entire original grant and to locate by survey an entirely new grant somewhere within the perimeter of the original grant. The original grant was located at the time of its survey, and it extended to and included every inch of ground within its perimeter, and the new grant was located by a new survey prior to the issuance of the new title.

Whatever view may be taken of the rights of the government of Mexico with respect to this grant, it must be conceded that the title of the grantee was greater than that of a tenant in common under the English and American laws, for the grantee was certainly seized "*per my et per tout*," by the half or moiety and by all, and the grantee not only had the right to the possession of the whole as well as of every part, but until after a decree ascertaining the existence of an excess and declaring it forfeited, coupled with a survey segregating, and a conveyance or decree allotting a certain portion of the land to the grantee, *he had the exclusive right to the possession of the whole, even as against the Government.*

ARE ALL RULES OF EQUITY, GOOD MORALS, AND NATURAL JUSTICE TO BE TOTALLY ABANDONED AND IGNORED SIMPLY BECAUSE THE FORM OF THE JUDICIAL TRIBUNAL WHICH POSSESSED THE POWER TO HEAR AND DETERMINE SUITS TO REFORM PATENTS TO LAND IN MEXICO, OR ITS FORMS OF PROCEDURE, DIFFERED FROM THE CHARACTER, FORM, METHODS, AND PROCEDURE OF THE JUDICIAL TRIBUNAL CLOTHED WITH THAT AUTHORITY IN THE UNITED STATES UNDER OUR CONSTITUTION AND FORM OF GOVERNMENT?

The honor of the United States is at stake, and we do not think that this court, which is recognized as the highest and most powerful judicial tribunal on earth, is prepared to promulgate any such doctrine by its decisions in a proceeding in which the United States Government is not seeking to forfeit titles upon microscopical or unsubstantial or technical grounds, but in which it is simply endeavoring to perform the moral obligation which rests upon it under its solemn treaty with the government of Mexico and under international law, as well as upon sound principles of good morals and natural justice, to protect the ownership of private property belonging to its subjects acquired under the treaty, who now owe their allegiance to this Government, but whose property rights remain unchanged by the transfer of dominion over the country from Mexico to the United States.

In investigating these private rights of property, solely for the purpose of confirming and declaring the extent of the rights which existed in the owners thereof at the date of the Gadsden treaty (and not for the purpose, as is urged by counsel for the Government, of reforming titles to private property, and of thus declaring the extent of the rights which ought to have existed in the owners thereof, in the opinion of this court, at the date of said treaty), this court is directed by the act creating the Court of Private Land Claims (in strict accordance with international law) to be guided and controlled by the terms of the treaty and by the laws and ordinances of the government from which the title is alleged to have been derived and "ACCORDING TO THE LAW OF NATIONS."

It is conceded that the "law of nations" is rather an indefinite and uncertain field of knowledge; but, according to all writers on that subject, it is certainly supposed to be based (and it is not going too far to say that it certainly ought to be based) upon good morals and natural justice.

If this court has power to reform the title to this grant in

this proceeding, we must not lose sight of the fact that it is the Government of the United States which is seeking affirmative relief at the hands of the court, and that therefore it ought only to be allowed the affirmative relief sought by it upon clear and convincing proof that the government of Mexico suffered an injustice nearly a century ago, which ought to be righted at this late day, for the benefit of the United States as its successor in interest. In reaching this conclusion the court should be guided by the law of nations as well as by the laws of Mexico, and consequently it must proceed upon equitable principles and according to good morals and the principles of natural justice.

We submit that in this proceeding this court only has power and authority by a final decree:

First. "To settle and determine the question of the validity of the title;" and

Second. "To settle and determine the question of the boundaries," or, in other words, the location of the boundaries described in the title papers as the lawful boundaries of the grant.

But what are the lawful boundaries of the grant? In the case of Ainsa *vs.* U. S., 161 U. S., at page 211, this court, speaking through Justice Brewer, said:

"He (the surveyor) was directed to resurvey for Don Jose Elias and his parents the lands of Casita, giving them the area or number of sitios that legally belonged to them, with due separation of the sitio or sitios that resulted *in excess within the lawful boundaries of said lands of Casita.*"

The words in italics are quoted by this court from the survey of the demasias in that grant. It will be noticed that the Mexican officials referred to the "excess" as being "within the *lawful boundaries of said lands* of Casita."

It is obvious, therefore, that the Mexican officials con-

strued the natural boundaries described and set forth in the title papers of the grant as constituting its "lawful boundaries." And as this court said, in the case of Hornsby *vs.* U. S., 10 Wall., 224, "we cannot, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than that received from the Mexican authorities who were intrusted with their execution."

In the case of U. S. *vs.* Fremont, 17 Howard, —, the counsel for the Government of the United States urged in their brief that the grant ought not to be confirmed by this court, for the reason that the patent from the Government of the United States would convey to the grantee a valid title to the *minerals within the grant*, whereas under the laws of Mexico the *grantee had no such right.*

Counsel say:

"This land contains mines of gold and silver which by the Mexican law did not pass to the holder of the grant. Should you confirm this title, the grantee will obtain a patent which will pass to him the minerals to which by virtue of his original grant he is not entitled. Therefore do not confirm."

To this the court replied:

"We are acting under the statute of 1851. In it we find *no exception to mineral lands.* We are directed to investigate all titles that are laid before us, and confirm or reject them upon the principles laid down for our guidance in the statute itself. *Whether the confirmation and patent will vest a title to the minerals in the claimant is a matter with which we have nothing to do in this case, and which can only be the subject-matter of consideration* IN ANOTHER AND A DIFFERENT FORM OF ACTION."

We respectfully submit that the Court of Private Land Claims and this court have nothing to do with the question of reforming titles to land which had not been reformed by the government of Mexico prior to the treaty. That is a matter with which this court has nothing to do in this case

and " which can only be the subject-matter of consideration in another and a different form of action," to wit, in a suit brought by the Government of the United States for that express purpose.

Whether the confirmation and patent in this case will vest a title to any excess which may exist in the grant in the claimant is a matter with which this court has nothing to do in this case. The principle involved is identical. The minerals, like the excess, were mixed up in its entirety with the area for which a title is held.

My quotation from the brief of counsel for the Government in the Fremont case is taken from the case of Moore *vs.* Shaw, 17 Cal., at page 206.

The principle involved in this question seems to be covered by the general rule of law laid down by this court in the case of Pollard's Lessee *vs.* Hogan, 3 Howard, 219 and 225, as follows :

" Every nation acquiring property, by treaty or otherwise, must hold it subject to the constitution and laws of its own government and not according to those of the government ceding it."

In Mexico the title to the grant could only be reformed as to the excess, provided the treasurer general, who was the officer clothed with the judicial authority to hear and determine the question of the existence or non-existence of any excess within the grant, reported to the government (presumably the chief executive officer or governor of the State) that a " very great " excess existed, and provided further that said government considered that such excess was " *very great*," and that therefore the owner of the grant ought not to be allowed to retain the whole thereof or some less portion than the whole thereof (such amount to be determined by said government) by paying an additional price or sum of money to the government to wipe out the equity

existing in the government from the fact that quantity had been of the essence of the contract.

How can such a proceeding be now had in this country? Upon the report of what officer shall the Government determine whether the excess is "very great" or not? And what officer of this Government has been intrusted by law with the power to determine that question?

"The title passed *in presenti*, and the whole vested or none."

The reservation of the surplus is a defeasance, and it is void if the condition to give it effect has become impossible.

3 Pick., 272 (401?).

It can no more be reformed in this proceeding upon this ground than it could be forfeited upon proof that it had been abandoned by the grantee for a continuous period of one year prior to the treaty. Mexico never enforced the right and she might never have chosen to do so. This government is in the shoes of a mere subsequent grantee and she obtained title to no land which had previously been alienated by a completed title.

We know of no grant in Mexico in which it was held that the excess was "very great" in the opinion of the government, and while the law of the State of Sonora of 1852 might be persuasive in leading us to believe that if the excess exceeds one-third of the quantity called for in the title papers it shall be deemed "very excessive;" that law is certainly not controlling, for the reasons: First, that the State of Sonora had no control or jurisdiction over the public lands within its borders in 1852, because that power, control, and jurisdiction vested in the government of Mexico at that time; and, second, because it was a mere declaration of a rule to guide the conscience of the government of Mexico in reforming the titles of the owners of land, and that rule was never put into force or effect as to this grant prior to the Gadsden treaty; and, thirdly, it is not equitable, it is not good morals,

it is not natural justice, and it does not express the true conscience of Mexico upon this subject, as she has declared it in every other legislative enactment on the subject, including the law of 1863 and the law of 1894. And we have seen that even these far more equitable laws "alarmed" owners in Mexico and were denounced by them as *mere* acts of confiscation. The law of Sonora of 1852 is a mere act of confiscation in so far as it directs the sale of the demasias at auction, and, like the decrees of Santa Ana declaring all grants void and to which this court was asked to give that effect in the Ely case, this law has no effect upon our rights, because no action was ever taken under it by Sonora or Mexico to divest our title prior to the Gadsden treaty, and the divestiture of a title not legally vested can only be consummated by a judicial finding and decree.

RULES OF CIVIL LAW AND OF COMMON LAW ARE IDENTICAL.

The rule of the civil law as applied in Mexico, not only between individuals, but as between the government and its grantees, in determining whether a grant is one by specific boundaries or by quantity, is identical with the rule under the modified form of the civil law which exists in Louisiana, and is identical with the rule of the common law in this respect.

The only distinction which ever existed in Spain or Mexico in this regard between a conveyance from one individual to another and a conveyance from the government to an individual, is that in the first class of cases no right existed in the seller to secure a rescission of the conveyance when quantity was of the essence of the contract, provided the seller was willing to pay the additional price which might be ascertained to be due upon equitable principles by a judicial decree; whereas, in the second class of cases, the government reserved the option of reforming the

title, even when the purchaser was willing to pay any additional price which might be ascertained to be due, except in so far as this option or right was modified or waived by the cedula of 1754 and the law of the State of Sonora of May 12, 1835; but in exercising this right the government of Mexico has always proceeded upon equitable principles, as we shall presently show, and all of her legislative enactments have been based upon the well-established principles of equity as applied to conveyances between individuals, *except in so far as those principles have been modified by the financial exigencies of the government.*

Turning first to the proposition that the rule is the same in Spain, Mexico, Louisiana, England, and the United States in regard to whether a grant shall be construed as one by specific boundaries or by quantity, we find that the reason given by the common-law judges for allowing natural landmarks and artificial monuments to control courses and distances in determining what land was conveyed by the deed or grant, and to allow courses and distances to prevail over quantity, is identical.

In the case of McIver's Lessee *vs.* Walker, 9 Cranch, 178, Chief Justice Marshall, speaking for this court, said:

"All lands are *supposed* to be 'ACTUALLY SURVEYED,' and the INTENTION OF THE GRANT is to convey the land ACCORDING TO THAT ACTUAL SURVEY. Consequently if marked trees and marked corners be found conformably to the calls of the patent, or if water-courses be called for in the patent, or mountains or any other natural objects, distances must be lengthened or shortened and courses varied so as to conform to those objects. It is a general principle that the course and distance must yield to natural objects called for in the patent."

"The REASON of the rule is that it is THE INTENTION OF THE GRANT to convey the land ACTUALLY SURVEYED, and mistakes in courses or distances are MORE PROBABLE and MORE FREQUENT than in marked trees, mountains, rivers, or other natural objects capable of being clearly designated and accurately described."

IN LOUISIANA, WHERE A MODIFICATION OF THE CIVIL LAW AND OF THE CODE NAPOLEON HAS BEEN ADOPTED BY STATUTE, *the rule is identical with that of the common law.*

In State *vs.* Buck & Fruit Co., 46 La. An., 670, the court says:

"A sale in which specific boundaries are given is a sale PER AVERSIONEM or a sale from ONE FIXED BOUNDARY TO ANOTHER, which INCLUDES ALL THE GROUND BETWEEN THE BOUNDARIES MENTIONED, WHETHER THE MEASURE BE CORRECTLY STATED OR NOT, THE CALLS FOR BOUNDARY CONTROLLING THE ENUMERATION OF QUANTITY."

Citing Harman's Heirs *vs.* O'Moran, 18 La., 526; Prejean *vs.* Giroir *et al.*, 19 La., 422; Hoover, tutor, *vs.* Richards, 1 Robinson, 34; Saulet *vs.* Trepagnier, 2 Robinson, 357; Labichie *vs.* Jahan, 9 Robinson, 30.

In Boyce *vs.* Cage, 7 An., 672 (La.), the court said:

"To constitute a sale *per adversionem*, (*i. e.* by specific boundaries) there must be either a distinct or separate object described, such as the Manor of Dale, an island, an inclosed field. A sale is also considered PER AVERSIONEM when it is FOR A TOTAL SUM, and ASSIGNS TO THE LAND SOLD EXISTING VISIBLE BOUNDARIES, such as rivers, highways, fences, pieces of stone, iron, or wood, showing the starting point and direction of the dividing line with the adjoining tenements. These last sales are held to be PER AVERSIONEM on the PRESUMPTION THAT THE PARTIES TO THEM HAVE THEIR ATTENTION FIXED RATHER UPON THE BOUNDARIES THAN THE ENUMERATION OF A QUANTITY."

Citing Fiske *vs.* Fleming, Syndic.

THIS RULE HAS BEEN UNIVERSALLY FOLLOWED BY THE SUPREME COURT OF LOUISIANA.

The case of Hoover, tutor, *vs.* Richards and Wife, 1 Robinson, 34, is neither a modification of nor an exception to the rule. It is plainly distinguishable, because in that case fixed boundaries were only given as to three sides of the tract of land sold, and the fourth side was left open and

undetermined by any fixed specific landmark, monument, or boundary, but, on the contrary, this fourth side was only determinable by the statement that the land had "a front on the river of about eight arpents, with a depth of forty, SO AS TO INCLUDE THE AFORESAID QUANTITY of 320 superficial arpents."

The land was described as situated "On the west margin of the Mississippi river, bounded on the upper side by the land of Samuel Phipps and on the lower by land of John Sandal, having a front on the river of about eight arpents, with a depth of forty, SO AS TO INCLUDE THE AFORESAID QUANTITY of 320 superficial arpents," et cetera. The court said:

"The last expression, viz., SO AS TO INCLUDE THE AFORESAID QUANTITY OF 320 SUPERFICIAL ARPENTS would seem to control the previous one setting out the adjacent proprietors and limiting the grant and superficies to 320 arpents situated between those two tracts, and having a front on the river, extending from the land of Phipps to the land of Sandal with the fourth side moving on a sliding scale so as to secure the QUANTITY of 320 superficial arpents."

The REASON for this decision was that NO PRESUMPTION COULD BE INDULGED that the minds of the parties met upon a fixed point or boundary for the fourth side, as there was no specific object or fixed place described on that side to attract, fix, or arrest their attention, and this is the FUNDAMENTAL REASON for the rule that specific boundaries shall prevail over courses and distances, and courses and distances over quantity, as we have seen.

It is apparent that the supreme court of Louisiana does not consider that the case of Hoover, tutor, *vs.* Richards and Wife is an exception or modification of the rule in regard to specific boundaries prevailing over courses and distances and over quantity, because it is cited in support of that rule in its latest decision that we have had time to find upon the

subject, State *vs.* Buck and Fruit Co., cited *supra*, and decided in 1894.

The case of Hoover, tutor, *vs.* Richards and Wife is paralleled by the decision of this court in the case of U. S. *vs.* Fossat, 20 Howard, 413, which involved the location and extent of a Mexican land grant in California, and in which the facts were identical with those in Boyce *vs.* Cage, to wit, the quantity was given and the southern, western, and eastern boundaries of the grant were designated by fixed natural landmarks. This court held that it must be construed as a grant by quantity, with the southern, western, and eastern boundaries as designated in the title papers, and by using a sliding scale, in order to fix the quantity named within said boundaries, in determining the length of the side lines from north to south.

The case of Phelps *vs.* Wilson, 16 La., 185, is no modification of or exception to the rule. The court held therein that the sale of a body of land as a section, which has limits *mathematically* fixed and established, and generally known, is not a sale *per aversionem* (by specific boundaries); but there the sale was of a certain number of acres described only according to survey lines which had been *mathematically* fixed, but which the court held, AS A MATTER OF FACT, were ONLY IMAGINARY LINES UPON THE EARTH'S SURFACE and DID NOT CONSTITUTE ANY FIXED OR PERMANENT OBJECT which it might be PRESUMED THE PARTIES FIXED UPON rather than upon the question of quantity.

The laws of Spain and Mexico at the date of the sale, to wit, 1821, when the proceedings were initiated, and January, 1822, when the sale was completed by the payment of the purchase price, and 1825, when the conveyance was consummated by the execution and issuance of the title papers, *did not authorize a sale of a floating or unlocated quantity* of land, but expressly *limited the power* of the granting officer to the making of *a sale based upon a prior survey of the land*

sold; and hence, if the proceedings showed upon the face of the title paper that the sale was *intended* to be one of an unlocated and unsurveyed quantity of land to be afterwards selected by either the government or the purchaser within designated outboundaries, it would be VOID for want of power in the officer to make such a sale.

Logically, counsel for the Government are right, and the legal title to the entire tract vested in the grantees, or else the grant was unlocated at date of Gadsden treaty, and hence, if the Spanish version of the treaty contains the requirement that the grant must have been located (which it does not, however), all these Arizona grants are of the kind that the treaty expressly refuses on the part of the United States to recognize as valid.

Effect of this rule would be to avoid every grant ever made in the State of Sonora had we acquired that State under the Gadsden treaty. It puts the Mexican government in the position of having failed to protect its citizens in their undoubted rights of property, and puts this Government in the position of intending to confiscate all private property when it entered into the treaty. A rule which would bring about such disastrous and alarming results, and one so contrary to natural justice, will not be readily adopted.

Surely, where a grant is made by metes and bounds, and according to a survey previously made, for the purpose, as Justice Fuller has said in the Ainsa case, "to delineate a tract containing the desired number of sitios" * * * "that is the land to come to him (the grantee)"—the intent of the parties is to convey the fee to that specific tract of land, and not to an unlocated and unspecified quantity only.

Surely, such a conveyance cannot be the exact equivalent of a "floating grant" such as is described by Justice Field in the case of Hornsby, *et al. vs.* U. S., 10 Wallace, 224, for such a grant was merely equivalent to a land warrant, which entitles the holder to have that quantity of land afterwards located and vested in him at some point within specified outboundaries, which may include the entire United States or a certain territory or a certain portion of a certain territory or territories. For in such a floating grant, title is not

vested in the grantee to any specific tract of land, and he is not entitled to the possession of any specific tract of land as against the world, until after the specified tract is located in accordance with law and he is put in juridical possession of the same.

Mallern *vs.* U. S., 1 Wallace, 282.
U. S. *vs.* Pico, 5 Wallace, 536.

In such a grant the survey and delivery of possession vest the fee to that specific tract in the grantee, says Justice Field, and the delivery of possession is a judicial determination that the grantee is entitled to that specific tract, and the fee thus vested cannot be divested, except by a judicial proceeding. As this court said in the recent case of Camou *vs.* U. S. "The divestiture of titles once legally vested is a judicial act."

But this does not involve the idea that if there was a mistake or fraud in such a survey, the Government would have no right to reform the title in a judicial proceeding for that purpose. It has often been determined by this court that the Government is in the same position as an individual in that respect and is subject to the same rules of proof as to the mistake or fraud, but it is only when the mistake is so gross as to be equivalent to fraud, and when the action on the part of the Government is promptly taken, that a title can be reformed merely on the ground of excess, under our system of laws; and in the case of Hancock *vs.* U. S., Justice Brewer writing the opinion, this court held that fifteen years' laches precluded the Government from raising the question.

In the one case, the grant issued before the survey, and the survey was necessary in order to vest the title of the grantee in any particular land; in the other case, the law required the survey to precede the grant, in order to specify and identify the land which it was intended to convey to the grantee, and it obviously follows that if the prior survey was omitted by mistake or fraud, and if this fact appeared

on the face of the title papers in the case at bar, the sale would be not merely voidable but absolutely *void for want of power in the officer* (under the laws of Spain and Mexico, which were then applicable within the limits of Sonora) to make a sale of an unlocated quantity of land.

How can it be said that the effect of the survey and delivery of possession was any different or any less efficacious in the case where the law expressly required the survey to precede the grant than in the case where the law or the conveyance expressly required the survey to succeed the grant?

If the survey and delivery of possession vested the title to that specific tract of land in the one case, it would seem irresistibly to follow that it did the same in the other.

What was the purpose of the survey, and of the notice to contiguous owners to be present, if it was not the intention of the Mexican government to convey the specific tract of land which was being surveyed?

What land, and what sitios were appraised?

Was it the duty of the appraisers to remeasure the land, and thus make sure of the number of sitios? Or was it their duty to inspect the land which had been measured and surveyed, and to appraise that particular land, accepting the statement of the surveyor as to the quantity or number of sitios contained therein?

If the petitioner asked for *four* sitios *and the survey actually included only three sitios*, but the surveyor stated it included four, and the public crier declared he was about to sell four sitios, *to what four sitios would title vest in the grantee by such a sale?* On which side of his grant would this Government give him the additional sitio at this time? Did the laws of Spain and Mexico give him an absolute right to the additional sitio or would it have been a matter of grace? Could he have recovered a portion of the purchase price if he had bid greatly in excess of the prevailing market price of four sitios of the best land? If not, is it not unequal and unjust, as Chief Justice Marshall said, to forfeit any part of his land if he paid a just price for the whole?

Surely, the title to some land vested in the grantee by

such a formal conveyance after such a careful survey and the erection of monuments and the placing of him in possession with a penalty under the law if he did not erect and maintain certain kinds of monuments at the points designated by the surveyor as the limits and boundaries of his land.

Counsel for the Government insist THAT IN MAKING THIS GRANT IT WAS THE *intent* OF THE GOVERNMENT OF MEXICO TO CONVEY ONLY AN UNLOCATED QUANTITY OF LAND WITHIN CERTAIN EXTERIOR BOUNDARIES, but we have seen that the granting officer had no power or authority to make such a sale, and it is not creditable to the government of Mexico to indulge in any such presumption, because to do so is to charge the government of Mexico with having made the formal survey and the appraisement of the lands so surveyed, and with having delivered to the intending purchaser the possession of the tract of land so surveyed *for the sole purpose of deluding and deceiving him into the honest belief* that in bidding for the land at the public auction sale he was buying a specified, located tract of land which he had examined and which he knew the value of, and of thus fraudulently *inducing him to pay a much larger price for the land than the quantity of unlocated land being actually sold by the government was worth.*

Ramon Romero was present at the survey of the land and he signed as a witness for the appraisement of the land, and also as a witness to the thirty auction sales of the land which were held at Santa Cruz. Bustillo, the petitioner, was likewise present at the survey and at the appraisement and the proper officer placed him in possession of the tract of land as surveyed, and it is difficult to understand how any one can reach the conclusion that either of these parties did not believe that he was bidding for all the land included in the survey.

MISTAKES IN SURVEYS.

It is no answer to say that the survey was so excessive as to the quantity of land included within it that Romero must be presumed to have had knowledge of its fraudulent character, for the following reasons, to wit:

(*a.*) The condition of Sonora was only semi-civilized at that time. Its population was sparse and was mostly composed of illiterate Christianized Indians and of a simply ignorant offspring from their marriages with an inferior class of Spaniards. Sonora was in a constant state of revolution during practically all the time from the date of Mexican independence down to the date of the Gadsden treaty. Its records of land titles were crudely kept and sometimes destroyed. Land was of little value, and the unit of measurement in making grants was 4,338½ acres. The ruling price for dry land was the sum of ten dollars, or, in other words, the large amount of forty dollars for a cattle ranch of four sitios, which was the maximum amount that could be sold to a wealthy person. The paramount consideration exacted by the government was that the lands should be occupied, and there was probably not a competent surveyor in the entire country.

(*b.*) The record shows that these mistakes in surveys were almost universal. (See testimony of Ygnacio Bonillas, Rec., pp. 96, 97, 135, 138, 224, and 225, and Pl'ff's Ex. F 60, at pp. 444, 445, and 446.) Bonillas testifies that in making over one hundred resurveys of grants in Sonora, as a government official, he had occasion to verify more than one thousand courses and distances, and that in only five or six instances did he find either the course or the distance correct, and that in no one instance did he find both the course and the distance correct, and that in only two of these hundred grants did he find that the quantity actually contained

within the perimeter of the grant was less than that called for in the title papers, and that in all the other ninety-nine grants he found the quantity contained within the boundaries was much greater than the quantity called for in the title papers, and that from his observations in making surveys he found that up the valley or stream was called "North" if it pointed anywhere within ninety degrees of north on either side, and that the directions at right angles thereto were called "East" and "West" respectively, and that the surveyor often stated that he ran a certain number of cordels toward the north or some other direction, whereas he actually ran not more than one-tenth or less of the distance stated, and that the surveyor stated that he ran the same distance in the opposite direction, whereas he actually ran five or ten times the distance stated. At page — of the record he gives a striking illustration of this fact, and refers to a grant with which Special Agent Henry O. Flipper, who was then present in court aiding the counsel for the Government, as is shown by the record, must have been familiar.

Speaking of a grant, this court, in Billings *vs.* U. S., 2 Wall., 449, said:

"Perhaps the province of California at that time could not furnish a man capable of making an *actual* survey."

If we are to believe the recitals in the expediente of this grant, the surveying party, measuring with a cord only fifty varas long, *actually* chained the first day six miles from the center toward each cardinal point, returning to the center each time for a fresh start. This would make forty-eight miles, and they had come from the town of Santa Cruz, which is twelve miles south of the center, making sixty miles; and if they returned to Santa Cruz it made a total of seventy-two miles traveled by them that day. *It is highly improbable, if not impossible, that this was done.* The fact probably is that they actually went to the places at which they state they actually erected monuments, but *in no case*

did they actually measure the distance. They generally knew the land which the petitioner wanted, and they always asked him where he wanted it, and whenever he asked them not to go any farther in a certain direction because the land was better in the opposite direction, they followed his request and gave him the additional distance in that opposite direction as they estimated it. This was a recognized custom with the full force of positive law.

It is significant that Special Agent Flipper, who testifies in the case of Faxon *vs.* United States, which was heretofore before this court, that he had an extensive experience in resurveying grants in Sonora, and that he had examined the titles to over two thousand grants in Chihuahua, was not put upon the stand as a witness by the Government to contradict or modify any statement made by Mr. Bonillas.

At page 227 Bonillas testifies that he does not know of a single instance where the owner was not allowed to retain the entire grant—that is, to retain all the excess—if he desired to do so.

In his testimony, at pages 117 and 118 of the record, Mr. Ygnacio Bonillas states that he resurveyed the Santa Barbara grant, which contained about twelve square leagues, including the excess, and that the owners were allowed to retain the excess "at very low rates, not above two cents, probably two and a half cents per acre on account of the long-time possession under the grant," although they had lost their title papers, and the only way in which the boundaries of the grant could be determined was from the fact that in one of the deeds made by one of the successors in interest of the original grantee he described the grant as extending from certain boundaries on the south to certain boundaries on the north, and from a range of mountains on the east to a range of mountains on the west.

The Alamo de Sevilla grant is located just east of the presidio of Santa Cruz, in Sonora, and it was resurveyed in 1885 or 1886 by Mr. Ygnacio Bonillas. The title paper

calls for four sitios of land, and in making the original survey the Mexican surveyor had run 200 cordels, or two leagues, from the center toward each cardinal point, giving the grant a total area of sixteen sitios, as in this grant.

At page 97 of the record Mr. Bonillas testifies that in resurveying the Alamo de Sevilla grant he found he could not go to the south center monument described in the title papers, because it would take him into other private property, and so he surveyed the grant in that direction to the limit of these private properties, and that he did not find the east and west center monuments, and so he gave the grant simply the 200 cordels which the title called for, and that he found within these boundaries an area of $23\frac{1}{2}$ leagues, or 102,355 acres. As the total area called for in the title papers was four sitios, or 17,354 acres, that would leave an excess of 85,001 acres. The Mexican government permitted the owner of this grant to retain this entire quantity.

(c.) In an official letter, written by Jose Maria Mendoza, the treasurer general of the then department of Sonora, to the Secretary of State and of the Department of the Treasury of the Republic of Mexico, on February 23, 1839, he says:

"MOST EXCELLENT SIR: One of the sources of public revenue in this department is that from the composition and grant of lands for breeding cattle and horses and is that which, from the time of the extinguished intendencies of the Spanish government up to the present, has been and continues to be, extremely enormous and laborious, because of the innumerable registries made by breeders of the immense tracts of public lands which this department has; because of the large number of grantors who appropriate CONSIDERABLE EXCESSES OF SITIOS which are wanted by breeders who need them and DEFENDED BY THOSE WHO ARE IN POSSESSION OF THEM, *and said excesses arising from the fact that ancient surveyors, from ignorance or bad faith, to measure two sitios, measured four, and to measure that number measured eight or more sitios, etc.*, and finally, because of the many

tracts of land that are surveyed and lawfully held, but without the grant title, because of the failure or delay of the holders of the same, and because of the inculpability of others WHOM AN INVINCIBLE IGNORANCE or just and reasonable causes have prevented from acquiring such documents for their protection, BUT AGAINST WHOM THOSE LANDS HAVE BEEN DENOUNCED BY INTERESTED PARTIES WHO BELIEVE THE FORMER HAVE LOST THEIR RIGHT, wherefore it may be asserted that said bureau for the composition and grant of lands in Sonora has always absorbed and continues to absorb almost the entire attention, to state it in that way, of the chiefs and employés of the treasury, under whose charge it has been and is at present, and it has also occupied probably the greater part of the labors and mechanism of its offices, as is clearly apparent from the multitude of finished expedientes of lands that exist therein; from those the proceedings in which are pending and from those that are instituted anew more and more every day. * * * In consequence the honorable congress of the old State, during the federal régime, notwithstanding the existing laws on lands, saw itself under the necessity of afterward enacting other laws and decrees relating thereto, numbers 10, 26, 21, 62 and 75 of May 30 (Reynolds, 184) and July 11, 1834 (Reynolds, 186) May 12, June 13, and July 17, 1835, besides regulations by the executive of said State of February 28 of the second of said years (that is, of the year 1835)," et cetera.

The foregoing letter shows that the law of the State of Sonora of May 12, 1835, was passed for the purpose of confirming and quieting title in the possessors to all grants in which an excess existed; and we shall presently attempt to show by authority that it conveyed a vested right in the excess to the grantee and was irrepealable for that reason; or, rather, that it was an absolute waiver by the Mexican government of its option to reform the title by a judicial proceeding instead of demanding an additional price merely.

(*d.*) On October 22, 1791, Pedro de Nava, a Spanish officer holding a high position at Chihuahua, a neighboring State to Sonora, issued an order saying that " In accordance with

the opinion of the assessor of this commandency general, I have resolved by decree of today that * * * considering sufficient for the new settlements that are being formed under their protection, *the boundary of four common leagues, measured from the center of the plaza of the presidio, two to each wind*, I have also determined, in order to avoid doubts and appeals in the future, that the captains limit themselves hereafter in the concession of grants of lots and lands *to those that shall be included in said four leagues*, without their being increased in any manner, leaving free and operative the exclusive jurisdiction that belongs to the intendentes of the royal treasury for the sale, composition and apportionment of the other lands in their respective districts."

There can be no doubt about the fact that at the time of said order each presidio was entitled to only four common leagues or, in other words, to only four sitios of land, and yet there can be no doubt about what Pedro de Nava intended when he directed and ordered that in measuring "said four leagues" the surveyor should commence at the center of the plaza of the presidio and should measure "two (leagues) toward each wind," because the universal rule for the measurement of a sitio, both in Spain and Mexico, from time immemorial had been and still is to commence at a central point and to measure one-half a league, or fifty cordels, toward each of the cardinal points of the compass, returning to the center and taking a fresh start for each of such measurements. Practically every grant in Mexico was measured in this way, and the rule is laid down as an unqualified one in both Galvan and Eschriche for the proper measurement of a sitio. Moreover, the language is plain and unmistakable in this order, as Pedro de Nava directs that the survey shall be "*measured from the center of the plaza of the presidio*," and he certainly intended that the plaza should remain as the center of the presidio, as was the universal custom in Mexico, and I defy counsel for the Government to suggest any possible way in which a person can

"START" at a "CENTRAL" point and measure two leagues toward any wind and continue the survey so as to make a square of any number of sitios of which that STARTING point shall be the CENTER. It can only be done by returning to the center each time and making a fresh start "toward each wind." Moreover, this expression was a universal one in Spain and Mexico, and its meaning is unequivocal. It means the same thing the world over. "Toward a wind" means in the direction from which that wind is coming. We speak of a north wind and of a south wind, and of an east wind and of a west wind, and of a southwest trade wind and of a southeast trade wind, and no one ever doubts the meaning of the language.

Moreover, the "common" lands of the presidio of Santa Cruz contained about the same quantity of land as this grant, although the law limited them to four sitios, and in the survey of them the same mistake was doubtless made, and the residents of Santa Cruz believed that was the way to measure four sitios. The northeast corner, north center, and northwest corner monuments of the presidio were connected with the southeast corner, south center, and southwest corners of this grant. (See sketch, record.)

It cannot be presumed, under these circumstances, that Romero or any other of the purchasers had any knowledge that the grant contained more than four sitios of land.

Moreover, the promotor fiscal or attorney general of Sonora approved the proceedings of the survey of this grant in January, 1822, and the officers composing the superior board of the treasury likewise approved it at that time, and Riesgo, the commissario general, approved it and directed title to issue in May, 1825, and the treasurer general, who was the judicial officer possessing power to reform titles to lands, again approved it in 1831 by writing to Romero requesting him to pay ($50) fifty dollars additional fees therefor and to take out of the treasury the title papers in this

grant which had been entrusted to him for delivery by said commissario general.

It is axiomatic that every officer is presumed to have performed his duty until the contrary is shown.

"*All favorable presumptions will be made against the forfeiture of a grant.*"

Gonzales *vs.* Ross, 120 U. S., 616.

The testimony of Mr. Bonillas, at page 129 of the record, is instructive as showing how little we can be guided by the acts of the Mexican officials in determining what equitable rules should be applied by this court in settling the titles to Mexican grants. Mr. Bonillas testified, as is there shown, that the residents of Santa Cruz had a good many lawsuits with outside parties over the boundaries of the presidio, and that finally the residents of Santa Cruz got together and decided that if they did not have the town lands properly allotted among the different heirs of the families in the town, that they would probably lose them all (through denouncements of land being made by outside parties under which the surveys included portions of the presidio of Santa Cruz because no representative of the town attended at the time of the survey and protested against the surveyor encroaching upon the presidio lands by running his lines within their boundaries), and they therefore sent a commission and begged the governor to interfere in settling their titles to the presidio lands, and *the governor advised them to make a survey of what lands they had left*, and they did have such survey made and secured a new title to that portion of their lands.

At page 228 of the record, Mr. Bonillas testifies that he now holds title himself to that part of this grant which lies in Mexico, about two sitios, and in answer to Mr. Pope, one of the counsel for the Government, he testified as follows:

"Q. Did you deraign your title from the Government?

"A. Yes, sir. I would like to explain if you will allow

me. I think there was an application made for a survey of the Encinitos. The publications were made summoning the owners and those that might have any claim to these lands to appear and show why no such survey should be made. Nobody appeared; nobody claimed the land; consequently the Government, believing that it was its own land, issued title to it.

"Redirect examination by Mr. HENEY:

"Q. You can denounce any private lands in the State of Sonora and the Government will issue title to you?
"A. Yes, sir.

"Recross-examination by Mr. POPE:

"Q. Do you have to petition for the land that you own?
"A. All the proceedings are gone through. If you do not appear to show why title to the land should not be sold, why, it is sold, and title issued upon demand of a third party."

And counsel for the Government say that this is evidence of the fact that the Mexican government was not bound as a matter of law—*that is, as a matter of good morals, natural justice, and sound equity*, and not, as a matter of grace—to recognize our title to any particular part of this grant or to any more than four sitios thereof, and that the United States ought not to recognize our title to even the paltry amount of four sitios, *because no particular four sitios in the grant were ever designated as ours*, ALTHOUGH IT HAS NOT BEEN SHOWN THAT AT THE DATE OF THE TREATY ANY EXCESS WAS KNOWN TO ANY PERSON TO EXIST WITHIN THE GRANT.

Alfred A. Green made application to the judge of the first instance, at Magdalena, to have this grant decreed to him according to the title papers, in the year 1880, and, after a trial, the judge of the first instance gave directions to the district judge, at Guaymas, to issue a decree or decision that he was entitled to all the lands to the outside boundaries. Magdalena is in the district within which that part of this

grant lies which extends into Mexico (Rec., pp. 227, 228). Are counsel for the Government willing to accept this fact as conclusive proof of our rights to the entire tract? It is a poor rule that does not work both ways.

The privilege which is accorded to other Mexican citizens of denouncing the surplus or demasias does not operate to divest the title of the grantee to the excess, any more than does the same privilege which is extended to Mexican citizens to denounce the entire tract, if it is abandoned by the grantee or his successors in interest for a continuous period of one year. The grantee may abandon the land for fifty years, and the legal title will continue in the grantee until it is divested by a judicial proceeding, instituted for that express purpose, either by some private person who denounces the land (that is, who petitions for the privilege of purchasing the same at public auction after a hearing and determination in a judicial proceeding that it has been abandoned) or by the Government; or unless he is by a judicial proceeding for some other purpose which operates, as a bar to his rights by reason of its being an action *in rem.*

And this was the law in Mexico, no less than in the United States and England, notwithstanding the fact that the political arm of the government in Mexico retained the power to hear and determine these questions, before a land officer who was clothed by law with this judicial power.

White *vs.* Burnley, 20 How., 235.
Taylor *vs.* Brown, 5 Cranch, 234.
Mitchell *vs.* Smale, 140 U. S., 374.
Sturgeon *vs.* Floyd, 3 Richardson (S. C.), 90.

A patent divests the title of the United States from each and every part of the land described therein, and the Government has the same rights as an individual to sue to set it aside; but it has no other or greater rights than an individual, and it is bound to establish the mistake of its

officer, or the fraud of the grantee, by clear and convincing evidence.

U. S. *vs.* Hughes, 11 Howard, 568.

U. S. *vs.* Maxwell Land Grant Co., 121 U. S., 949.

IN OTHER WORDS, IN MEXICO THE GRANT WAS VOIDABLE BUT NOT VOID AS TO THE EXCESS; AND HENCE THE LEGAL TITLE AND FEE TO THE ENTIRE AREA WITHIN THE PERIMETER OF THE GRANT PASSED OUT OF THE GRANTOR AND VESTED IN THE GRANTEE AT THE TIME OF THE SALE.

An excess of quantity in the grant does not affect its validity, regularity, or completeness. It is a perfect grant if the title was lawfully issued, or if the issuance of the title was afterwards ratified or confirmed, even if the grant contains an excess of quantity; and there only remains in the sovereign a mere right of action to recover an additional purchase price upon principles of equity, or to reform the title upon the ground of mistake in its own officer or of fraud in the grantee.

"*The patent is the highest evidence of title, and is conclusive as against the Government and all claiming under junior patent or title until it is set aside by some judicial tribunal.*"

THE COURT OF PRIVATE LAND CLAIMS IS COMPOSED OF FIVE JUDGES WHO WERE APPOINTED IN 1891, AND WHO HAVE BEEN CONSTANTLY ENGAGED EVER SINCE THAT TIME IN STUDYING THE QUESTIONS OF LAW INVOLVED IN THE DETERMINATION OF THE VALIDITY OR INVALIDITY OF THE TITLES TO MEXICAN GRANTS, TO THE EXCLUSION OF EVERY OTHER DOMAIN OF THE LAW.

The first decision made by those judges was that the Nogales grant was void, because not located, or that in any event the grantee was only entitled to the quantity of land called for in the title papers, and that he had already received that quantity.

In the Ely case, which was one of the next decided by

that court, it held that the grant was void for *want of power* in the officer to make it, but subsequently it became convinced that its decision upon that point was wrong, and in the next case of the kind that came before it a contrary decision was rendered.

Before this court had rendered its decision in the case of Ely *vs.* U. S., holding that the officer who made the grant had power to do so, but that it was equitable, under the facts in that case, for this Government to confirm the grant only for the quantity specified in the title papers, the Court of Private Land Claims tried and decided the case of Maish *vs.* U. S., involving the title to the Canoa grant in Arizona, and held that it was a grant by specific boundaries and that it vested in the grantee a valid and perfect title to all the land contained within the boundaries described in the title papers. That grant was made under a similar system of laws to the one involved in the Ely case, and the facts in relation to the price paid were similar, and this court reversed the case and held that it was equitable for this Government to confirm the grant only for the quantity mentioned in the title papers. The decision was made upon the authority of the case of Ely *vs.* U. S.

In the case at bar the Court of Private Land Claims held that this case is not different in its essential features from the case of Ely *vs.* U. S., reported in 171 U. S., and that, therefore, the decision in that case is conclusive as to the regularity of the proceedings and the validity of the claim in this case, and that this case is not distinguishable from the cases of Ely *vs.* U. S., and of Cameron *vs.* U. S., and of Perrin *vs.* U. S., and of Maish *vs.* U. S., which were all decided by this court at the same time, and are reported in 171 U. S., and that, therefore, this grant could only be confirmed for the quantity mentioned in the title papers.

The trial court gave no consideration to the fact that the grant shows upon the face of the title papers that the surveyor measured sixteen sitios instead of four, and that the price paid

by the grantee in this case exceeded the minimum price at which the government was willing to sell sixteen sitios of the best quality of land at that time, and that the number of purchasers exceeded one person for every four sitios of land contained within the grant, and that the price paid by the grantee exceeded the prevailing market price of the entire quantity and quality of land which was contained within the natural boundaries described in the grant.

THE TRIAL COURT FOUND AS A MATTER OF FACT THAT THE BOUNDARIES OF THE GRANT ARE AT THE PLACES FIXED IN THE MAP OR PLAT OF THE SURVEY OF THE GRANT WHICH WAS MADE BY MR. YGNACIO BONILLAS IN THE YEAR 1895, because—

In paragraph IV of the decree of that court it holds that "the petition herein and the answers of defendants Colin Campbell and Harvey L. Christie were sustained by legal and satisfactory proofs," etc., and the plat of the survey of this grant by Bonillas is a material part of said petitions and answers.

The court further held that this "grant was complete and perfect at the date of the treaty and the statute creates no limitation as to the time within which an action for the confirmation of such a grant must be brought."

The decision by the Court of Private Land Claims sustaining the grant was made by Chief Justice Reed and Justices Stone and Sluss, and these are the same three judges who held in the Maish case that the Canoa grant was one by specific boundaries, and that it conveyed to the grantee a valid title to all the lands within its boundaries.

In the recent case of The Arrivaca Land and Cattle Co., appellant, *vs.* U. S., now pending on appeal in this court, being case No. 153 of the October term, 1901, Justice Sluss filed a dissenting opinion upon the trial of the case in the lower court, in which he discusses in a masterly way the question of the location of a grant and of the effect of a sur-

vey thereof prior to the sale and according to which survey the grant was made.

The reasoning of Justice Sluss is so convincing and is, to my mind, so unanswerable that it leaves nothing more to be added upon this subject. That part of the opinion of the learned justice which bears upon the questions involved in this case is quoted in full in the brief and argument of Mr. Rochester Ford, of counsel for Colin Cameron in this case, at pages 28, 29, 30, 31, and 32 thereof.

It is true that Justice Sluss concludes by holding in that case that the grant ought to be confirmed for only two sitios of land, although a greater quantity is contained within its boundaries, but *it is apparent from the reasoning of the opinion that he reaches this conclusion only because he considers that the decision of this court in the Ely case and in the Maish case is conclusive upon the Court of Private Land Claims in the determination of the validity or invalidity of all similar grants.*

THIS CASE DISTINGUISHABLE FROM ELY CASE.

WE RESPECTFULLY SUBMIT THAT THE CASE AT BAR IS PLAINLY DISTINGUISHABLE FROM THE ELY CASE AND THE MAISH CASE, because—

IF THE GRANT IS LIMITED TO SIXTEEN SITIOS, BEING THE AMOUNT WHICH IT IS SHOWN ON THE FACE OF THE TITLE PAPERS TO CONTAIN, THERE CAN BE NO SHADOW OF REASON UPON WHICH IT CAN BE MAINTAINED THAT THE GOVERNMENT OF MEXICO HAD ANY MORAL OR EQUITABLE RIGHT TO RECOVER ANY SURPLUS LAND OR ANY ADDITIONAL PRICE, because,

(*a.*) The total price paid amounts to seventy-five dollars per sitio for sixteen sitios, and the minimum price for which the Government was willing to part with its title to the land, and at which the land usually sold, provided each and every sitio contained permanent running water, was only sixty dollars per sitio.

(*b.*) The law officer of the Government whose duty it was to examine the expediente or record of the proceedings of the survey, appraisement, and sale must be presumed to have seen and known that the tract of land appropriated and severed from the public domain by the survey and sale and delivery of possession to the grantee, contained at least sixteen sitios.

GRANT NOT VOID ON ITS FACE.

THIS GRANT IS NOT VOID BECAUSE IT APPEARS ON THE FACE OF THE TITLE PAPERS THAT THE TRACT OF LAND CONVEYED CONTAINED AT LEAST SIXTEEN SITIOS, WHEREAS THE GRANTING OFFICER POSSESSED POWER TO GRANT ONLY FOUR SITIOS TO ONE PERSON.

"Under our form of government it is elementary that all power to reform a patent by officers of Land Department vanishes the moment the patent has been executed, and that ALL irregularities on the part of the officers intrusted with the preliminary proceedings are wiped out, and that for such irregularities PRIOR TO THE ACTUAL GRANT the government, and not the individual, must bear the consequences."

U. S. *vs.* Arredondo, 6 Peters, 751.

"The reason of this rule is that it is the grant and not the preliminaries, which passes legal title to the land."

Colson *vs.* Lewis, 2 Wheaton, 378.

"When power is given to subordinate officers, their action upon the premises is binding on the Government. The only question which can arise is power in the officer or fraud in the parties."

Belcher *vs.* Lynn, 24 Howard, 508.

"When the law has appointed a special tribunal to hear and determine certain matters arising in the course of its

duties, the decision of that tribunal, within the scope of its authority is conclusive upon all others."

Johnson *vs.* Townsley, 13 Wallace, 72.

The limitation was upon the power of the officer *to make the grant*—that is, to execute the title papers, and by that final and irrevocable act to divest the government of Mexico of its property.

All of the acts of the officers who had any duties to perform in the matter prior to that final act were subject to revision and review in Mexico, just as they are in this country under our system of disposing of the public lands, and a large discretion is vested there, as here, in the officer who performs the act of executing the final title. This is peculiarly true of the officer who executed the title in Mexico, because he was clothed with judicial power to reform and annul titles as well as to make them.

Two irregularities only occurred in the making of this grant, to wit: First, the fact that the petition was by one person, and that the tract surveyed and sold contained sixteen sitios; and, second, that the appraisers in appraising this tract believed that it contained only four sitios, and they therefore appraised only four sitios.

The first irregularity is obviously insignificant for the reason that the law did not prevent four or more persons from petitioning for the sale of sixteen sitios of land, and consequently no substantial injury resulted to the government from the fact that only one petitioned for the land, and that he only petitioned for four sitios, whereas sixteen sitios were actually surveyed and sold; provided it does not appear upon the face of the proceedings that the land was sold to less than four persons: because it must be presumed that the higher officers who had power to pass upon the validity of the sale became acquainted with the facts and approved the sale regardless of these irregularities, *because the Government incurred no substantial injury therefrom.* The title papers

show upon their face that the sale was made to Ramon Romero and the other residents of the presidio of Santa Cruz, and the evidence shows that the total number of grantees was twenty-one or twenty-two persons, and it must be presumed that the officers intrusted with the execution of the title papers and with the approval of the sale inquired into and knew these facts.

It is equally obvious that no substantial injury could have resulted to the government from the fact that only four sitios of the land were appraised, *because it appears from the face of the proceedings that the total price paid for the land amounted to $75 per sitio for sixteen sitios, whereas the best quality of land within the grant, to wit, that containing running water, was appraised at only sixty dollars per sitio,* and the proceedings further show upon the face thereof *that the appraisers examined the land in detail and found that it contained no land which was susceptible of irrigation.*

"If the officers of that department of the Government have acted within the general scope of their powers and without fraud, the patent which has issued after such proceedings must remain a valid instrument, and the court will not interfere unless there is such a gross mistake or violation of the law which confers their authority as to demand a cancellation of the instrument."

"The dignity and character of a patent from the United States is such that the holder of it cannot be called upon to prove that everything has been done that is usual in the proceedings had in the Land Department before its issue, nor can he be called upon to explain every irregularity or even impropriety in the process by which the patent is procured."

U. S. *vs.* Marshall Mining Co., 129 U. S., 588, 589.

The same principle was applied to a Mexican grant title by this court in the case of Hornsby *vs.* U. S., 10 Wall., 237.

"The general rule is, that when the acts of the officers of a foreign government are brought in question in our courts,

the acts performed by them will be presumed to have been within the scope of their lawful authority, unless the contrary appears."

Mott *vs.* Reys, 45 Cal., 379.

"The construction of their powers and of the laws which conferred them, adopted and acted upon by the authorities under the former government of the country, must be respected until it be shown that they have clearly transcended their powers or have acted manifestly in contravention of law;" and

"It would not be reasonable to suppose that the higher officials who acted in the execution of this grant did not have as enlightened views in respect to the true policy of the government, and as just an appreciation of their powers and duties as we possess in respect to them."

Hancock *vs.* McKinly, 7 Texas, 443.
De Lassus *vs.* U. S., 9 Pet., 134.
U. S. *vs.* Clark, 8 Pet., 452.
Strother *vs.* Lucas, 12 Pet., 438.

"The acts of public officers in disposing of public lands under color or claim of authority are evidence thereof until the contrary appears by the showing of those who oppose the title set up under it and deny the power by which it is professed to be granted. Without the recognition of this principle, there would be no safety in title papers, and no security for the enjoyment of property under them."

U. S. *vs.* Arredondo, 6 Pet., 728.

In the case at bar the sale was consummated in January, 1822, and the money was paid to the proper Government officer by the grantees at that time. The proceedings were approved at that time by the attorney general, the treasurer, the auditor, and the governor. Title was issued on May 15, 1825, by Riesgo, who occupied the high and important office of commissario general, and possessed extensive general powers in relation to sales of land. In 1831 the grantees were called upon to pay an additional sum of fifty dollars as fees for the preparation of the title papers, and were no-

tified to take them out of the office of the treasurer general, to whom they had been intrusted for delivery to the grantees by Riesgo.

All these officers had important duties to perform, and the power of the officer to make grants of land having been once established, every presumption must be that the officer acted in conformity with the law as known at that time, and not in violation of it.

Gonzales *vs.* Ross, 120 U. S., 616.
Hanrick *vs.* Jackson, 55 Tex., 17.

The Alamo de Sevilla grant called for four sitios only, and the survey upon its face included sixteen sitios, as in this grant, and in the year 1885 it was recognized as valid by the Mexican government, and the grantee was allowed to retain all the excess, which was almost as great as it is in this grant (Rec., p. 97).

The second irregularity is that the tract of sixteen sitios was *appraised* upon the theory that it only contained four sitios; but it is apparent from the face of the proceedings that the government of Mexico suffered no substantial injury by reason of this defect, because the best land within the grant was appraised at only sixty dollars per sitio, and the amount paid for the grant exceeded the rate of seventy-five dollars per sitio for all the land apparently contained within the survey.

In the case of Ainsa *vs.* U. S., 171 U. S., the promotor fiscal (attorney general) found fault with the calculation of quantity, and required an additional price to be paid by the grantee for a fraction of a sitio, so that the government would get its *minimum* price for that quantity of land at least.

In this case if Riesgo, the high officer who issued the title four years after the sale, had not seen that the price was at the rate of $75 per sitio, or more than the highest legal rate for the entire 16 sitios which the survey disclosed within the grant, and

had not seen that the number of purchasers or grantees was more than one person for every four sitios of land, we must presume he would have disapproved the sale, as was his duty, and would have ordered a resurvey, and hence those irregularities are cured by his act in issuing the title three years afterwards.

If Riesgo had declined to approve the sale because the survey and grant included 16 sitios, whereas only four sitios had been petitioned for and appraised, and because only one person petitioned for the sale, and that hence it was irregular for the granting officer to sell more than four sitios, or because the action of the granting officer in doing so was void on this latter ground, it would have been his duty to order a resurvey for the four sitios, and to refund to the purchaser the just value of the 12 sitios thus to be deducted from the survey. *Will the United States do less?*

Counsel for the Government have cited a case at page 163 of their main brief which establishes the foregoing contention. They say:

"In that case the proceedings were initiated on March 29, 1813, and went through various official channels, until they reached the viceroy at Mexico in 1816. On November 22, 1816, the viceroy referred the expediente to the attorney of the royal treasury. On December 31, 1816, the attorney recommended that the expediente be approved for four sitios instead of five, as the amount of land was limited to *four sitios for one person*, and husband and wife were one person. This expediente further shows that proceedings were thereupon had to segregate the four sitios from the original five, *and pay back the value of the one rejected.*"

Romero bid for this grant believing that it contained all the land within its boundaries. Will the United States refund the value of the 31 sitios of which its counsel seek to deprive us? Has this court power to so decree? We think it has as much authority to do that in this proceeding as to reform the title.

Hence, we must conclude that, even if VOIDABLE for any reason, the grant is certainly NOT VOID on account of anything which appears upon the face of the proceedings.

LAW OF 1835 A LEGISLATIVE GRANT.

See Appendix (page 101).

MOREOVER, THE LAW OF THE STATE OF SONORA OF MAY 12, 1835, IS CLEARLY A LEGISLATIVE GRANT, AND IT CONFIRMED AND VALIDATED THIS GRANT TO THE BOUNDARIES DESCRIBED IN THE TITLE PAPERS AND CURED ANY IRREGULARITIES WHICH MAY HAVE OCCURRED IN THE MAKING THEREOF.

No particular words or form of words are necessary to effect a legislative grant or a legislative confirmation of a grant already in existence. The intent of the legislature must be controlling and the act must be liberally construed. A legislative grant or confirmation is sufficient to pass the title to the grantee, and the subsequent issue and delivery of a patent is only evidence of a previous grant which took effect *in presenti* and which did not require the delivery of a patent in order to pass the title to the grantee.

Morrow *vs.* Whitney, 5 Otto, 551.
Langdeau *vs.* Haynes, 21 Wallace, 521.

The effect of the law of 1835 was to waive the right of the State to reform the title in any event and to limit its rights to conform to those between individuals—that is, to the right to recover the equitable balance of purchase price or to defeat the grant if such balance was not paid by the grantee upon demand—

EXCEPT ONLY THAT THE GOVERNMENT COULD STILL HAVE THE TITLE REFORMED IN A PROPER JUDICIAL PROCEDURE, IF, IN THE OPINION OF THE GOVERNMENT OFFICERS, THE AMOUNT OF SURPLUS WAS "VERY EXCESSIVE."

This law was enacted by the State of Sonora for the purpose of stopping the serious contentions then going on between persons in possession of grants containing excesses, who claimed that they owned the grant to the boundaries, and other persons who disputed their ownership and insisted upon the right to acquire a part of the grant on account of the alleged excess which existed within it. This fact is

proven by the letter written by Mendoza in 1839 and hereinbefore quoted in full.

This law of Sonora is in line with the decisions under the ancient laws of Virginia, which authorized other persons to acquire the surplus lands within a grant (see Taylor *vs.* Brown, 8 Cranch, 251), and under this law every grantee was protected in his right of property over all the land within the boundaries of his grant as against the whole world until, after a judicial proceeding instituted for that express purpose, it had been ascertained that an excess existed in the grant, and even then the grantee had the right to retain the whole of his property, and was under no obligation, except that of paying an additional price for the land at the rate which prevailed at the time of the appraisement.

In other words, this law confirmed the grantee in his title to the entire tract and established by legislative enactment the same reciprocal rights and duties between the government and the grantee which, as we have seen, existed in Mexico between an individual seller and an individual purchaser.

At the most, the obligation on the part of the grantee to pay an additional price *when an excess shall be ascertained to exist in the grant* was a condition subsequent, and conditions subsequent are not favored in law, and *the right to sue for forfeiture of a condition subsequent is not alienable*, and the United States did not acquire such right, therefore, under the treaty.

Davis *vs.* Gray, 16 Wall., 203.

Conditions for the payment of money to the grantor are generally construed to be conditions subsequent.

Weinreich *vs.* Weinreich, 18 Mo. App., 370.

Drew *vs.* Baldwin, 38 Wis., 529.

Am. & Eng. Ency. of Law (2 ed.), vol. 6, page 503, note 5.

Conditions of forfeiture in grants must be raised by express terms or clear explanation, and must be construed strictly.

See Brown *vs.* State, 5 Col., 496.
U. S. *vs.* Arredondo, 6 Peters, 743.

Counsel for the Government point to subsection 8 of section 13 of the act creating this court, which provides that "no concession, grant or other authority *to acquire* land made "upon a condition or requirement, either antecedent or subsequent, shall be admitted or confirmed, unless either such "condition or requirement was performed *within the time and* "*manner* stated in such concession, grant or other authority "*to acquire* land."

The time at which the condition subsequent in this case was to be performed had never arrived prior to the Gadsden treaty; and, if that condition followed the land into the United States, the time had never arrived until the trial of the case in this court, and at that time the owner of the grant duly offered to perform the condition in the manner stated in the law imposing it.

But, in my humble opinion, the law quoted has no bearing upon this case. This is not a grant "*to acquire* land," but it is a *perfect* grant under which land *was acquired. The performance of the condition subsequent was not necessary in order to vest title*, but its non-performance made the title subject to be divested upon a determination of that fact by the proper judicial procedure. *A complete and perfect legal title was vested in the grantee by the grant, and it could only be divested by a judicial act.* The Cessna case has no possible bearing upon the question, and I cannot conceive that counsel for the Government expect to be taken seriously in presenting it.

WHEN A LAW IS IN ITS NATURE A CONTRACT, AND ABSOLUTE RIGHTS HAVE VESTED UNDER IT, THE LAW CANNOT BE REPEALED.

Terrett *et al. vs.* Taylor, 9 Cranch, 44.

No new or additional consideration is required to support a ratification or a confirmation.

Drakeley *vs.* Gregg, 8 Wallace, 242.

Hence the right to retain all the land within the boundaries vested in the grantee in 1835, and that right could not be divested by anything short of a judicial procedure, because it vested the title to all the land to the boundaries, and it requires a judicial proceeding to divest it, as was said by this court in the Camou case.

"This is true on the principle of natural justice, even in the absence of a constitutional provision against the power of the State to take the property of an individual without due process of law, or against its power to impair the obligation of a contract," says Chief Justice Marshall.

Fletcher *vs.* Peck, 6 Cranch, 177.

The law of 1852 had no effect upon the vested rights of the grantee, unless the grantee or his successor in interest had actually been dispossessed of that land under the law prior to the treaty.

AS A PLAIN, HUMAN, COMMON-SENSE PROPOSITION, THE GOVERNMENT OF MEXICO HAD NO MORAL OR EQUITABLE RIGHT TO REFORM THE TITLE TO THIS GRANT OR TO RECOVER ANY SURPLUS LAND WITHIN THE DESCRIBED BOUNDARIES OR ANY ADDITIONAL PRICE, because—

(*a.*) The parties bidding for the land undoubtedly understood and believed that it included all the land, and that specific tract of land within the natural landmarks and artificial monuments described in the title papers, and *they must be presumed to have bid the highest price which they considered* **ALL** *of that land worth.*

(*b.*) *The price paid by the purchaser amounted to more than the prevailing market price* usually paid at that period of time *for the entire quantity of land within the boundaries of this grant*, and amounted to more than the minimum

price which the government was willing to accept for the ENTIRE QUANTITY AND QUALITY OF LAND within the perimeter of this grant as described.

(c.) The unit of measurement for land in Mexico was 4,338.464 acres, and the price ordinarily received for land amounted to about two-tenths of a mill per acre. The price for dry land was ten dollars per sitio. This tract contains about thirty-five sitios, and not more than seven of those sitios contain running water, and upon not to exceed three of them can water be obtained by wells. The entire tract is a high plateau, being at an elevation of about 4,500 feet above the sea level. The remaining twenty-seven sitios are "dry" sitios. Hence we have seven sitios at sixty dollars, amounting to $420; three sitios at thirty dollars, amounting to $90, and twenty-five sitios at ten dollars, amounting to $250, thus making the total value of the tract of land at the minimum price which the government was willing to accept, and at the usual price at which such lands were sold in that vicinity at that period of time, just $760, whereas the price bid and paid was $1,200, or about 60 per cent. above the prevailing market price of and the value fixed by law for the ENTIRE QUANTITY OF LAND WITHIN THE PERIMETER OF THIS GRANT.

It must be apparent that if the tract had been divided into nine tracts of four sitios each, and had been sold at nine separate public auctions, it would not have produced as much money as it did when sold in one tract, because cattle cannot travel more than three or four miles in that country to and from water; and the water is not located upon this grant, so that the aggregate value of the separate tracts would have been equal to the value of the single tract containing all the land; for this reason and for the further reason that, owing to the altitude, cattle cannot do well there unless they can retire to the protection of the foot-hills and mountains in the winter for feed as well as warmth.

It must not be forgotten that there is practically not a single acre of agricultural land within the perimeter of this grant.

That quality and character of land usually sold at the minimum price of sixty dollars per sitio for land containing permanent running water and thirty dollars for land upon which water could be obtained by wells (and this meant wells which could be dug under the facilities existing at that period of time and in that country) and ten dollars per sitio for dry lands, such as the greater portion of the lands are within the perimeter of this grant.

The Sonoita grant (Ely case) purporting to contain one and three-quarters sitios, containing running water, and the greater portion of which was, and is, agricultural land, and the running water upon which is amply sufficient for irrigation purposes, and which purposes were known and utilized in those days, was appraised and sold at sixty dollars for each sitio. It lies immediately northwest of this grant and is almost contiguous, and was sold about the same date.

The San Rafael de la Valle grant lies a short distance east from this grant and purports to contain four sitios, each of which has running water and was appraised and sold at sixty dollars for each sitio, or $240.

The Babacomari (Perrin case) lies immediately north of and almost contiguous to this grant and purports to contain six sitios with running water on each, appraised at sixty dollars each, and two dry sitios, appraised at ten dollars each, making a total of $380, *and was sold at that sum at a date subsequent to the sale of this grant.*

The government of Mexico exacted OCCUPATION of the land by the purchaser, and before passing the title to him it invariably required PROOF that he had the means to stock it, and thus to occupy it, before the sale to him would be approved. The REASON for imposing this condition must necessarily have been that the government desired to settle its frontier and to extend its civilization to the uttermost limits of its territory. Many persons could pay the usual

price of about two hundred dollars for a cattle ranch of four sitios of land, whereas the cost of stocking such a ranch must have amounted to several thousands of dollars, even in those days. The testimony shows that more than twenty thousand head of cattle were placed upon this grant by the original grantees, and the record shows that there must have been some rule or regulation of the Land Department which required improvements in the way of buildings to be placed upon the ground. (See Romero's letter, Rec., p. —.)

The object of the government was to furnish a barrier on the frontier against the "common ENEMY," as he was called—the Apache Indians.

Thus a part of the consideration to be paid was not only the POSSIBLE, but the PROBABLE, loss of stock and of life which would ensue from the occupation of the grant by attacks from Indians who made raids, not in couples, but in bands of from five hundred to one thousand or more, and who attacked and wiped out whole towns, as was the case with the presidio of Santa Cruz when it was located about fifty miles north of this grant, and even subsequently, when it was located about six miles south of the southern extremity of this grant.

Practically the entire stock of the original owners of this grant, amounting to over twenty thousand head of cattle, was killed or driven off by the Apache Indians.

THE PENALTY FOR A FAILURE TO OCCUPY THE GRANT FOR THE SHORT PERIOD OF ONE YEAR WAS A RIGHT IN THE GOVERNMENT OF MEXICO TO FORFEIT THE TITLE OF THE GRANTEE BY A JUDICIAL PROCEEDING FOR THAT PURPOSE. AND THE WHOLE OF THE LAND WAS OPEN TO DENOUNCEMENT BY PRIVATE PERSONS UPON THIS GROUND AS VACANT PUBLIC LANDS.

AND YET IT IS URGED BY COUNSEL FOR THIS GREAT GOVERNMENT THAT IT WOULD BE IN ACCORDANCE WITH GOOD MORALS AND EQUITY FOR THIS GOVERNMENT, AT THIS LATE DAY, TO GIVE TO THE OWNER OF THIS GRANT ONLY THE

QUANTITY OF LAND SPECIFIED IN THE TITLE PAPERS, AND TO GIVE HIM THAT QUANTITY ONLY PROVIDED THE ORIGINAL CENTER CAN BE DISCOVERED UPON WHICH TO FASTEN IT, AND ALTHOUGH BY MEASURING FROM THAT CENTER THE GRANTEE MIGHT SECURE ALL DRY LAND WHICH IS OF NO POSSIBLE VALUE FOR AGRICULTURAL, GRAZING, OR ANY OTHER PURPOSE; WHEREAS THE ORIGINAL GRANTEE MADE HIS BID AND PAID HIS MONEY UPON THE BELIEF AND UNDERSTANDING THAT HE WAS PURCHASING PERMANENT RUNNING WATER IN PLACES WHICH CONTROLLED LARGE AREAS OF SURROUNDING LAND FOR GRAZING PURPOSES.

The Mexican government enjoined its officers in the title paper to protect the grantee in his possession of the tract of land according to the BOUNDARIES SET FORTH AND DESCRIBED, and it enjoined the grantee to maintain monuments of mortar and stone at the points specified in said title papers as constituting such boundaries; and the Mexican government did protect the grantee in his possession of the entire tract of land to said boundaries as long as it maintained dominion over that part of the country, to wit, until the Gadsden treaty.

The United States has placed the grantee upon a par with every squatter upon the grant. The principle of law upon which alone it has protected the owner of the grant is that of POSSESSIO PEDIS, and it has accorded to every squatter upon the grant the same measure of protection and upon the same principle of law, although he located upon the same with full knowledge of the fact that it was owned and claimed as a Mexican grant, and even if he seized possession of the land surrounding the well-known center of the grant at no earlier a period than yesterday. It has exacted of him no taxes for his possession, while exacting of the grantee taxes upon the entire area of land within the perimeter of his grant, at the peril of losing *all* unless he paid the same, *although he was deprived of all the essential elements of ownership of property*, to wit, the exclusive

possession thereof. Hence for a period of nearly half a century every shotgun squatter has received equal recognition under the law with the real owner, who bought and paid for the land nearly a century ago, and who maintained possession at an enormous sacrifice of life and money long prior to the advent of these squatter sovereigns.

In the case at bar the sale was for a fixed price and lump sum, to wit, THE HIGHEST PRICE BID AT THE PUBLIC AUCTION SALE FOR THE TRACT OF LAND *supposed to contain four sitios of land which had been surveyed* in favor of Bustillo and which the intending purchaser or bidder could identify and ascertain the boundaries of prior to the auction sale by examining the expediente or proceedings of survey, and the law expressly required previous notice of the sale and thirty successive auctions on thirty successive days *in the vicinity of the land*, so that intending bidders could acquaint themselves in this manner with the extent and character of the land which the government intended to sell, and could regulate their bids accordingly.

At the public auction sale no price per sitio was suggested *except for the purpose of explaining the quality of the land.* The prior appraisement had been made for the protection of the government and for the sole purpose of determining the minimum price as a lump sum which the government would be willing to accept *for the tract of land so surveyed in favor of Bustillo* and *as described by natural landmarks and artificial monuments in said expediente.* The bid which secured the land *was a lump sum* of $1,200 for THE TRACT AS SURVEYED IN FAVOR OF BUSTILLO, and the patent or titulo recites that the sale was made of the tract as surveyed in favor of Bustillo *and for this lump sum.*

There was never any judicial adjudication that this San Rafael de la Zanja grant contains any excess or surplus within its perimeter, *i. e.*, within the natural landmarks and artificial monuments described in the title paper, by any officer clothed with the judicial power to try and determine

that question in Mexico prior to the date of the Gadsden treaty. The grantee and his successors in interest never had any duty imposed upon them by any law of Spain, Mexico, or Sonora to take any step to have the question of the existence or non-existence of such excess or surplus determined, and it is not shown that they ever had any knowledge prior to the Gadsden treaty of its existence.

Under the law of the State of Sonora of May 12, 1835, the duty rested upon the government officials (if anywhere) and not upon the grantee or his successors in interest to institute the necessary proceedings to ascertain the existence or non-existence of any excess in the grant for the purpose of divesting the title to the same, which had vested in the grantee, or for the purpose of recovering any additional price for such excess, if the same was found to be due to the government under the universal rule of equity then existing in Spain and Mexico, as well as in England and the United States, as between individuals, to wit, "the just price of the excess at the time of the sale;" or, in other words, as is stated in said law, "at the price that governed when it was surveyed and appraised;" or, in other words, at the price fixed by law as the minimum price for that quality of land.

We submit that under any just construction of this law the additional price which the government might have the right to recover would be determined by appraising the entire tract of land according to its quality at the prices per sitio fixed as a minimum by the laws of Mexico at that time, to wit, sixty dollars for a sitio containing running water, and thirty dollars for a sitio upon which water could be obtained by wells (that is, the class of shallow wells which it was practicable to dig at that day in that section of the country, which was the outermost limit of civilization in Mexico), and ten dollars per sitio for dry land, such as the evidence shows the great majority of this land to be; and by deducting from that total amount, which in this

case would not exceed $760 (to wit, seven sitios at sixty dollars, amounting to $420; three sitios at thirty dollars, amounting to $90; and twenty-five sitios at ten dollars, amounting to $250; or a total of thirty-five sitios, amounting to a total price of $760), the amount which was paid by the purchaser for the land (and which in this case was the sum of $1,200). It will thus be seen that the government of Mexico received the full price of all the land contained within the perimeter of this grant and about 60 per cent. of such just price in addition thereto; and hence if the case was one between individuals, *in which quantity was of the essence of the contract* and in which neither the purchaser nor the seller was estopped by recitals in the conveyance which required the application of certain rules of law, *the seller would not have the right to recover any additional price from the purchaser* upon any recognized principle of equity or under the statutory laws of Mexico as cited from Hall's Mexican Laws, *supra*, BECAUSE, while it may be apparent from the evidence that the total quantity of land is greatly in excess of the quantity which the seller *supposed* was contained within the boundaries of the grant, *it is equally apparent that the purchaser was deceived by such boundaries into paying a price or lump sum for the tract which is still more greatly in excess of the value of all the lands within the boundaries of the grant at the prevailing market value, as well as at the rate fixed by law.*

Location of Boundaries.

As this brief has already become unusually long, owing to our efforts to answer all the points suggested by counsel for the Government, and those indicated by the court during the oral argument, and as this court may not care to pass upon the question of the location of the boundaries, provided it decides the questions of law involved in the case in favor of the claimants, we will take the liberty of

discussing the evidence in relation to the boundaries of the grant in a separate brief. We understand that it has been the practice of this court, in the other Arizona grant cases, to send the case back to the trial court for the location of the boundaries in accordance with this court's opinion on the law of the case; and we presume that this court will prefer to pursue the same course in this case.

Respectfully submitted.

JOHN W. GRIGGS,
FRANCIS J. HENEY,
Attorneys for Claimants Colin Cameron and Harvey L. Christie.

APPENDIX.

Law No. 51, of May 12, 1835, of the State of Sonora is as follows:

"ARTICLE 1. Those who have acquired property in lands of the State by lawful title are owners in good faith even when they have lost that document, for they are entitled to revalidate it upon proof of the incident that may have occurred.

"ARTICLE 2. Those are likewise *bona fide* owners who, under the description given in their records of survey, occupy some excess of land; and they are entitled to such excess, even after such excess is shown, without any other requirement than that of paying for the excess in accordance with the quality of the land at the price which prevailed when the land was measured and appraised, and only in case the owner does not want the excess, or when such excess is very great in the opinion of the government, upon the report of the treasurer, shall such excess be awarded to any one denouncing or soliciting it; and such person shall bear the expense of the resurvey if excess has not been ascertained. In lands measured by calculation none shall be regarded as excess that does not exceed half a sitio."

NOTE.—The foregoing is the official translation, made expressly for this court and adopted by it in the case of Ainsa *vs.* U. S., 161 U. S., 225.

Supreme Court of the United States.

OCTOBER TERM, 1901.

UNITED STATES, Appellant, vs. A. A. GREEN, R. R. RICHARDSON, COLIN CAMERON, et al., Appellees.	No. 109.
HARVEY L. CHRISTIE and COLIN CAMERON, Appellants, vs. UNITED STATES, Appellee.	No. 129.

Appeal from the Court of Private Land Claims.

PETITION FOR REHEARING.

BY

HARVEY L. CHRISTIE AND COLIN CAMERON.

The Court erred in affirming the decree of the Court of Private Land Claims; because,

POINTS.

FIRST. The Spanish original of the Gadsden Treaty does not contain any condition that a grant need not be respected or considered as obligatory, unless it was located prior to the treaty. The only requirement contained in the Spanish version of the treaty is that the grant shall have been "inscribed and recorded" prior to the treaty. And by inscribed is meant that it shall have been noted or indexed, or, in other words, that a Toma de Razon of the grant shall have been made.

SECOND. The Spanish version of the treaty must control under the decision of this Court in the case of *Arredondo* vs. *United States* (6 Pet. 740) and under the weight of authority upon international law.

THIRD. The Sonora law of May 14, 1852, was in full force and effect at the date of the treaty, it is conceded by counsel for the Government, and that law must be read into the conveyance or title papers of this

grant with the same effect as if it had been originally inserted therein.

Under that law the grantee is entitled to select the "cabida legal" wherever he chooses within the out-boundaries of the grant.

FOURTH. When the law of 1852 is read into the conveyance the grant becomes at least as firm and valid as was a "floating grant" in California; and under the decisions of this Court a floating grant is a vested right of property which must be respected, unless the treaty expressly and clearly intended to exclude it from confirmation.

FIFTH. The moment the territory within the area of the Gadsden Treaty became a part of the United States, all the grants lying therein and all rights of property therein came under the protection of the Constitution of the United States, and no person (whether Mexican or citizen) can be deprived of his property as it existed at that instant, without due process of law.

In Mexico the "cabida legal" was never considered "nailed to the ground" at the center or any particular place within the out-boundaries of the grant.

SIXTH. The property must be respected, "as it then was" as said by this Court in Ely's case (171 U.S. 259).

> "A right of any validity before the treaty was equally valid afterwards. The act recognizes alike legal and equitable rights, and should be adminis-

tered in a *large and liberal* spirit."

U. S. vs. *Moreno*, 1 Wall. 400.

Surplus lands (Demasias) are defined by Mexican law

> "To be those held by private persons on primordial title and to a greater extent than specified, such surplus however being within the boundaries mentioned in the title, and consequently *mixed up in its entirety with the area for which a title is held.*"

This is the exact equivalent of saying that the "cabida legal" is mixed up in its entirety with the surplus lands within the grant; and hence it is obvious that "To every and each part of the land surveyed (i. e., within the out-boundaries of the grant) its owner has an equal right", as was said by Chief Justice Marshall in *Taylor* vs. *Brown*, 5 Cranch. 234.

The right to "select the principal or main area" ("cabida legal") at any place within the boundaries of the grant under said law of 1852, is the exact equivalent of the right to "allot the surplus" in any part of the grant which the grantee may choose, under said ancient law of Virginia, referred to by Chief Justice Marshall in the case just cited.

Hence the grant should be treated as "located", within the meaning of the Gadsden Treaty, in spite of the fact that a mistake was made in the original survey (provided the English version of the treaty is allowed to control); and the grantee should, nevertheless, be allowed to select his "cabida legal" in any part of the

grant he chooses; and if the Mexican version of the treaty is held to control, there would seem to be no doubt about the right of the grantee to select the "cabida legal" in any part of the grant he chooses.

SEVENTH. The action of Mexico, long subsequent to the treaty, in withdrawing from grantees the right to select the "cabida legal", does not alter or affect the character of that right as a vested and absolute right of property in the grantee, in the case at bar, at the date of the treaty.

Mexico can and has impaired the obligation of contracts and deprived its citizens of vested rights of property with impunity; but,

> "Every nation acquiring property by treaty, or otherwise, must hold it subject to the constitution and laws of its own government, not according to those of the government ceding it."
>
> *Pollard's Lessees* vs. *Hogan*, 3 How. 219.

And in this country, when a law is in its nature a contract, and absolute rights are vested under it the law cannot be repealed.

Terrett et al. vs. *Taylor*, 9 Cranch. 44.

> "And this is true on the principle of natural justice, even in the absence of the constitutional provision against the power of the state to take the property of an individual without due process of law, or against its power to impair the obligation of a contract."
>
> *Fletcher* vs. *Peck*, 6 Cranch. 177.

To confirm the grant in the case at bar in accordance with the decree of the Court of Private Land Claims is

to nail the four sitios, mentioned in the title papers, to the ground *at the center of the grant*, and to thus give to the grantee property which is practically worthless. In effect this decision is a confiscation of property and a forfeiture of the grant.

> "It is a cardinal rule that equity abhors a forfeiture."

As was said by this Court in the case of *Gonzales* vs. *Ross*, 120 U. S. 616:

> "All favorable presumptions will be made against the forfeiture of a grant."

And it is upon this theory that, so far as rights of individuals are concerned, in construing treaties, statutes, contracts and written instruments generally, the courts adopt a *liberal* construction, and if the treaty or statute admits of two constructions, one *restrictive* of the rights that may be claimed under it, and the other *liberal* as respects such rights, the latter is to be preferred.

1 Kent Com., 174;
Sharkes vs. *Dupont*, 3 Pet 242;
Hauenstein vs. *Lynham*, 100 U. S. 483.

Upon this same theory, in construing the rights of an individual, where there is a difference between the Mexican original of the treaty and the English version thereof, *the Court ought to adopt the construction contained in that version of the treaty which is most favorable to the rights of the individual.*

A translation of said law of Sonora of May 14, 1852, was made by Dr. J. I. Rodrigues, General Translator for the Bureau of American Republics at Washington,

D. C., and that translation is on file in this case under the title "ADDITIONAL BRIEF FOR CLAIMANTS", and we respectfully request this honorable Court to refer thereto.

ARGUMENT.

First.

THE ORIGINAL SPANISH VERSION OF THE GADSDEN TREATY, WHICH WAS RETAINED IN THE POSSESSION OF THE MEXICAN GOVERNMENT, DOES NOT CONTAIN ANY REQUIREMENT OR CONDITION TO THE EFFECT THAT A GRANT MUST BE "LOCATED" IN ORDER TO BE RESPECTED OR CONSIDERED AS OBLIGATORY.

The question was orally argued before this Court in the case of *Faxon* vs. *United States*, reported in 171 U. S. p. 244, and likewise in the brief which was filed therein by Francis J. Heney, Esq., on the part of the appellant. The question, however, has never been expressly decided by this Court prior to the decision in the case at bar, although it must be conceded that the case of *Ely's Administrators* vs. *United States*, 171 U. S. 220, leans that way in its reasoning.

The law on this subject is so clear, however, and the fact that the Spanish version of the treaty does not contain the word "located" is so free from doubt, that we are irresistibly led to the conclusion that this Court overlooked that fact in writing its opinion in the Ely case and likewise in this case.

Shortly after the publication of the decision of this Court in the Ainsa case, counsel for certain grant claimants sought the opinion upon the questions involved, of eminent authority upon Mexican law, and we herewith present the essential part of the joint opinion of Hon. Y. Sepulveda, Secretary of Legation at Mexico, and of Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, upon this particular question.

To them belongs the credit of calling attention first to a patent and most important contradiction which exists between English and Spanish copies of the treaty mentioned, in a particular which, under rules of construc tion of similar treaties, will do away with the element of "location", so held in the Ainsa case as a necessary requisite to confirmation of these grants.

Both the English and Spanish copies of this treaty are originals. Messrs. Sepulveda and Mendez, among other things, say:

" U. S. Statutes at Large, Vol. 10, p. 1031. The con-
" tradiction or mistranslation occurs in article VI,
" of the treaty: *Id.*, p. 1035, as follows:

FROM THE ENGLISH:

Or will any grants made previously be respected or be considered as obligatory which have not been *located* and duly recorded in the archives of Mexico.

FROM THE SPANISH:

Ni tampoco se respectáran, ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido *inscritas* y debidamente registradas en los archivos de Mexico.

" It is apparent that the word 'located' should have " been omitted from the English copy, and the word " 'inscribed' used instead.

" *Dominguez Diccionario Nacional*, inscrito, ta. " part. pas. irr. de Inscribir.

" On the other hand, if the English word 'located' " expressed the intention of the contracting parties, the " corresponding word in the Spanish version would " have been 'colocado'.

" *Dominguez Diccionario Nacional*, 'colocado', da. " part. pas. de colocar o colocarse.

" *Spanish and English Dictionry*, Velazquez, 'to lo- " cate', p. 314; 'colocar', p. 162.

" The word INSCRITAS, in the Spanish text of the treaty, from INSCRIBIR, signifies, speaking of titles by grant, to enter them in writing in some register or book of registers, and, in the legal Mexican expression, the words, REGISTRO E INSCRIPCION, REGISTRADO, é INSCRITO, are used indifferently one for the other, to signify the same idea, that is TO MAKE a note or make a compendium in a book called 'Register Book, Record Book' (Libro de Registro ó de Inscripciones) of the contents of a document. Hence these expressions we find used indistinctly in the Mexican Civil Code; for instance, in Title XXIII. of the Book III. of the Civil Code, which treats of the Public Register, or Books of Record, where note is to be taken of certain titles or documents mainly relating to real estate, we read: Art. 3188. 'The ' REGISTRY (record) shall be made in the office ' where the property mentioned is, according to its ' situation.' Art. 3189. 'If the property should ' be situated in different districts, the registry shall

'be made in all of them.' Art. 3190. 'Ninguna 'inscripcion puede hacerse si no consta que el que 'la pretende es actualmente dueño de los bienes, 'tiene derecho para exigir el REGISTRO ó pro- 'ceda con podor legal del propietario (No INS- 'CRIPTION shall be made if it does not 'appear that the one desiring it to be 'made is the present owner of the property, having 'a right to demand its REGISTRY, or acts with a 'legal power of the owner). Art. 3191. 'Solo 'pueden INSCRIBIRSE los títulos que constan de 'escrituras públicas, y las sentencias y providencias 'judiciales certificadas legalmente.' (There can only be INSCRIBED the titles that appear in public writings and the judicial sentences and orders legally certified.) Art. 3219. 'LAS INSCRIPCIONES 'no se extinguen en cuanto á tercero sino por su 'cancelacion, ó por el REGISTRO de la transmisión 'del domino ó derecho real INSCRITO á otra per- 'sona' (The inscriptions are not extinguished with regard to third persons, unless they be canceled, or by the registry of the transfer of ownership or right of realty INSCRIBED to another person). Examples might be multiplied to show that in the language of the Mexican laws now as before, and at all times, the INSCRIPTION of a grant or title to land, as well as that of any other instruments or documents, is nothing more than taking note of it or having it entered in a public REGISTER or Record."

Second.

THE SPANISH VERSION OF THE GADSDEN TREATY MUST CONTROL IN CONSTRUING THIS GRANT, BECAUSE

(*a.*) *This identical point was decided in the case of*

U. S. versus Arredondo, 6 Peters 740, where this Court said:

> "The King of Spain was the grantor, the treaty was his deed, the exception was made by him, and its nature and effect depended on his intention, expressed by his words, in reference to the thing granted, and the thing reserved and excepted in and by the grant. The Spanish version was in his words, and expressed his intention, and, though the American version showed the intention of this Government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted and what reserved; the rules of law are too clear to be mistaken and too imperative to be disregarded by this Court. We must be governed by the clearly expressed and manifest *intention of the grantor, and not the grantee*, in private a fortiori, in public grants."

This has become a rule of property which ought not to be disturbed or changed except for very momentous reasons.

(b) *The best writers on International Law declare that when a treaty is made in two languages, and one expresses a different idea from the other, that text ought to be taken as the original in which the treaty was negotiated, and the other as an authentic translation; and the original text should prevail and the translation ought to be corrected.*

See *Annotations on Marten's Compendium of Derecho de Gentes*, Book VI, p. 179, by Penheyro–Ferreira.

This view of the question is in conformity with the principles governing contracts between individuals.

The presumption is that a contract was entered into in the language of the country where it was made, and especially is this so when the subject matter is an instrument which in most countries, Mexico among them, can only be executed in the official language which is the national language. The treaty of 1853 was negotiated in Mexico and presumably it was negotiated in Spanish, and presumably the text in that language served for its discussion.

(c.) *So far as the rights of individuals are concerned, in construing statutes, treaties, contracts, and written instruments generally, the courts adopt a liberal construction, and if the statute or treaty admits of two constructions, one restrictive of the rights that may be claimed under it, and the other liberal as respects such rights, the latter is to be preferred.*

1 Kent Com., 174;
Sharkes vs. *Dupont*, 3 Pet. 242;
Hauenstein vs. *Lynham*, 100 U. S. 483;
The Amiable Isabella, 6 Wheat. 1;
U. S. vs. *Perchman*, 7 Pet. 832;
North German Lloyd S. S. Co. vs. *Hadden*, 43 Fed. 20;
U. S. vs. *Payne*, 8 Fed. 892.

(d). *The construction adopted by this Court, in its opinion, results in the confiscation of this grant and operates as à forfeiture of a vested property right, for which a valuable and money consideration was paid.*

" No construction of a treaty which would impair that security to private property which the laws

and usages of nations would, without express stipulations, have confirmed would seem to be admissible further than its positive words require."

Strother vs. *Lucas*, 12 Pet. 438.

In the case of *Chew Heong* vs. *U. S.*, 112 U. S. 536, Mr. Justice Harlan, speaking for this Court, said:

"Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, *the Court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected;* and it would be wanting in proper respect for the intelligence and patriotism of a co-ordinate department of the Government were it to doubt for a moment that these considerations were present in the minds of its members when the legislation in question was enacted."

When the Treaty of Guadalupe Hidalgo was being negotiated our Secretary of State wrote to the Mexican Minister of Foreign Relations and said, in relation thereto and for the purpose of inducing Mexico to accept the treaty without the insertion of certain additional conditions and stipulations for the protection of its citizens, that:

"It is our glory that no power exists in this country which can deprive one individual of his property without his consent and transfer it to another. If grantees of land in Texas under the Mexican Government possess valid titles they can maintain their claims before our courts of justice."

And, said our Secretary of State:

"The property of foreigners, under our Consti-

tution and laws, will be equally secure without any treaty stipulations."

Again, he says:

> "And here it may be worthy of observation, that if no stipulations whatever were contained in the treaty to guarantee to the Mexican inhabitants and all others protection in the free enjoyment of their liberty, property, and the religion which they profess, these would be amply guaranteed by the Constitution and laws of the United States. These invaluable blessings under our form of government do not result from treaty stipulations, but from the very nature and character of our institutions."

As was said by this Court in *De Lassus* vs. *U. S.*, 9 Peters 133:

> "Independent of treaty stipulations, this right (the perfect inviolability and security of property) would be held sacred. The sovereign who acquires an inhabited territory acquires full dominion over it, but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana excludes every idea of interfering with private property; to transfer lands which had been severed from the royal domain. The people change their sovereign. Their right to property remains unaffected by this change."

And yet under the construction given to the treaty by this Court, the title to the Arivaca Grant which has been vested in the claimant and his predecessors in interest since 1812 (a period of ninety years), and of which grant he has held undisputed possession during that time, is wrested from him upon the theory that this government *intended* by its solemn contract with

Mexico to accomplish this great wrong and that Mexico was so reckless of its obligations and duties to its own citizens that it consented thereto.

The Mexican Minister at Washington, in a note addressed to the Secretary of the Interior of the United States on July 3, 1888, pursuant to instructions from the Secretary of State of Mexico, explained the understanding of the Mexican Government of that clause of the Gadsden Treaty requiring record evidence in the following language:

> "When the United States acquired a considerable part of Mexican territory, first by the treaty of February 2, 1848, and afterwards by the treaty of December 30, 1853, both governments agreed in their desire to protect the inhabitants in their rights acquired to the lands which changed national ownership and agreed to respect inviolably the concessions (grants) of lands made by Spanish and Mexican governments previous to the dates of both treaties, and in Article 8 of the first treaty and in Article 6 of the second treaty their right of ownership to all their possessions was acknowledged (recognized, sustained) and also their right to dispose thereof as they should see fit.
>
> "But the object of this stipulation was merely to put an end to the abuses that had been committed by virtue of the first treaty in the presentation of fraudulent grants, and it was never the intention to deprive the legitimate owner of a piece of land of his rights thereto merely because he was unable to furnish legal proof of the grant or its record by exhibiting his title in any case, where the archives had been destroyed by the invading United States Army."

Nor ought it to be lightly presumed, we may add,

that it was the *intention* of the high contracting parties to deprive a *bona fide* owner of his land, simply because the government of Mexico had made a mistake in the survey, which had never been discovered by either party, and hence had never been rectified, prior to the treaty. To so hold is to declare that it was the *intention* of these two great nations to make an innocent and humble individual suffer for the *mistakes* of a powerful nation.

Blackstone tells us that in construing a law we should first examine the old law, then the mischief, and next the remedy. We know that article six of the Gadsden Treaty was intended as a *remedy*. We also know that the *mischief* which it was intended to remedy is fairly and correctly stated in the letter of the Mexican Minister at Washington which has just been quoted.

The discovery of gold in California followed close upon the heels of this Government's acquisition of that immensely rich territory, and the phenomenally rapid increase in the value of property, which but a few years before had been liberally granted by the Mexican Government in square leagues and not acres, aroused the cupidity of unscrupulous land-grabbers, and in Pio Pico, who was Governor of California at the time the war broke out, these designing rascals found a willing tool to aid them in their efforts to steal property which had so suddenly become of immense value. It was proven to this Court by unimpeachable evidence in numerous instances, that said Pico had fraudulently

issued grants to different individuals after the war with Mexico had commenced and after the United States had secured possession of a large part of that territory, and that Pio Pico had antedated those grants to the end that they might be held valid under the treaty that terminated said war.

Antedated title papers were issued by Pio Pico in due form of law, and if they were to be adopted as *prima facie* evidence of title by this Government when produced from the pocket of the grantee or by his assignee, who in many cases was a *bona fide* purchaser for value, it would have been practically impossible for this Government to protect its property from gross fraud, because it was an easy matter to establish the fact that many of the records of the Mexican Government relating to land titles had been lost or destroyed, and it thus became almost an impossibility for this Government to furnish conclusive evidence that the title papers in question had been antedated.

Necessity, therefore, compelled this Court to depart from the well-recognized principles of law which it has uniformly applied in passing upon the question of the validity of a title to land in the United States when the grantee holds a patent from this Government to his lands.

The laws of the United States require that a patent to land be recorded at length in certain books which are kept in the archives of this Government at Washington, and in that manner our Government preserves

a record which gives the complete description of the land granted, and yet this Court held in the case of *U. S.* vs. *Marshall Mining Company*, 127 U. S. 569, that the recording of the patent is not essential to the validity of the title of the grantee.

In the case of *U. S.* vs. *Stone*, 2 Wall. 525, this Court said:

> "The patent is the highest evidence of title, and is conclusive as against the Government and all claiming under junior patent or title until it is set aside by some judicial tribunal."

It cannot be doubted that, had this grant remained within the jurisdiction of Mexico, this claimant could have made out a *prima facie* case by simply producing his titulo and proving the authenticity of the signature of the granting officer. The absence of any trace of record evidence in the archives of Mexico would have in no way affected his title, and the burden would rest upon the Mexican Government to establish fraud by clear, convincing and unequivocal proof in order to avoid the grant.

Under the treaty of Guadalupe Hidalgo, it seems to the writer, this Court would have adopted that principle in passing upon the validity of titles to grants in California, just as it did in the early cases under the Louisiana and Florida treaties. But in order to counteract the gross frauds which had been attempted in California, the direct proof of which had been brought to the attention of this Court, it was necessarily compelled to refuse to indulge this presumption, and to

require some evidence that at least a portion of the record of a grant which was required to be made by the Mexican officials existed, or had existed in the archives, or, in the absence of any trace of such record evidence, that the grantee had been in possession of the land for a sufficient length of time prior to the treaty to avoid any suspicion of the *bona fides* of his claim.

As was said by this Court in the case of *U. S.* vs. *Neleigh*, 1 Black 306:

> "The propositions laid down in the *Castro case* and others preceding it were an absolute necessity to save the Government from utter spoliation of its territory * *. * The numerous frauds which had been attempted to be perpetrated, depending upon this theory of the destruction of the records, have compelled us to reject it altogether as fabulous."

Yet in the case of *De Aro's Heirs*, 22 How. 293, a grant was confirmed without any record evidence and upon the titulo alone and proof of its genuineness, accompanied with 16 years' possession of the land.

And a careful examination of all the land-grant cases from California will disclose the fact that when the authenticity and genuineness of the title papers were not disputed by this Government, and when the grantee was in possession of the land prior to the acquisition of the territory by this Government for a sufficient length of time to repel the suspicion of fraud, that rule of necessity in regard to record evidence was never enforced.

The writer has not been able to find a single case in which that rule of record evidence was enforced by this Court when the facts of the case did not justify a strong suspicion that the title was conceived and executed in fraud; and the Court uniformly called attention to the facts creating this suspicion and to its existence, in apparent justification of the Court's action in refusing to accord to the title, standing alone, all those presumptions which it would give to a patent from the United States.

In the case of *Gonzales* vs. *Ross*, 120 U. S. 629, this Court quotes with approval from the case of *Byrne* vs. *Fagin*, 16 Tex. 391 that—

> "Where there is a testimonio there is a presumption that the original is among the archives of the land office in its proper place of deposit. At all events, it is for the defendants to show by proper proof that it is not there."

In following Blackstone's suggestion that we examine the old law, then the mischief and then the remedy, we have already seen that under "the old law" the production of the titulo itself and the proof of its authenticity would immediately raise the presumption that the grant had been "duly recorded" in the archives.

We have further seen that the "*mischief*" rested in the fact that it was comparatively easy after the acquisition of California, for Pio Pico, who had been Governor of that territory, to manufacture and antedate grants which it would be difficult to defeat under the well settled *presumptions* of the "*old law*"; and that, there-

fore, the "*remedy*", which the necessities of the times had forced upon this Court, was adopted by our Minister when entering upon the treaty with Mexico for the acquisition of the lands comprised within the Gadsden purchase. It is fair to presume, therefore, that it was the intention of both the parties to that contract or treaty that only such evidence that the grant had been duly recorded should be required, as the investigations of this Court had already demonstrated to be absolutely necessary in order to protect this Government from being despoiled of its property by fraud.

Whatever may have been the mischief against which the United States desired to protect itself by the requirement that the grant need not be respected or be considered as obligatory, unless it had been "located" prior to the treaty, it must be apparent that the minds of the two contracting parties did not meet upon the proposition that the grantee should be deprived of his property in land which had originally been solemnly located by the Mexican Government by a survey made prior to the execution of the grant and made for the very purpose of describing the particular piece of land which the Government intended to convey. To so hold is to inject the words "accurately and correctly" into the treaty, so that it will read, that no grant need be respected or be considered as obligatory which had not been "accurately and correctly" located prior to the treaty. It would seem to be more in accordance with the principles of equity and of natural justice, as well

as morality, to hold that *a grant was "located" within the meaning of the treaty; provided a survey of the grant was made by the Mexican Government prior to the treaty in good faith for the purpose of locating upon the ground the particular land which it intended to convey.*

Any bona fide attempt by the Mexican Government to locate the grant prior to the treaty ought to be considered in equity as an actual location within the meaning of the treaty. In no other way can full justice be done to individuals.

> "All courts ought to feel a disposition to support a grant fairly made for a valuable consideration", says Chief Justice Marshall in *Blake* vs. *Doherty*, 5 Wheat. 362, and it is a cardinal rule that "equity abhors a forfeiture."

Third.

THE MOST LIBERAL VIEW WHICH CAN BE TAKEN OF THIS GRANT IS THAT THE GRANT IS A MERE "FLOAT". IF THE LAW OF SONORA OF MAY 14th, 1852, IS READ INTO THE TITLE PAPERS OF THIS GRANT, THE RIGHTS OF THE GRANTEE BECOME AT LEAST AS STRONG AS AND ALMOST SYNONYMOUS WITH THOSE OF THE OWNER OF A "FLOATING" GRANT SUCH AS THIS COURT BECAME FAMILIAR WITH IN THE CASES INVOLVING TITLES TO MEXICAN GRANTS IN CALIFORNIA.

A "floating" grant vested a right of property in the grantee which is protected by the Constitution of the

United States and of which he cannot be divested without adequate compensation.

Fremont vs. *The United States*, 58 U. S. 542:

"The words of the grant are positive and plain *They purport to convey to him a present and immediate interest.*" *id.*

"But although this cannot be regarded as a money consideration, making the transaction a *purchase* from the Government, yet it is the acknowledgment of a just and equitable claim; and when the grant was made on that consideration the title in a court of justice ought to be as firm and valid *as if it had been purchased with money on the same conditions.*" *id.*

"But, as between him and the Government, he had a *vested* interest in the quantity of land mentioned in the grant. *The right to so much land to be afterwards laid off by official authority in the territory described passed from the Government to him by the execution of the instrument granting it.*" *id.*

"The principles decided in this case appear to the Court to be conclusive as to the legal effect of the grant to Alvarado. *It recognizes as a general principle of justice and municipal law that such a grant* for a certain quantity of land by the government, to be afterwards surveyed and laid off within a certain territory, *vests in the grantee a present and immediate interest.* In the language of the Court, the general gift becomes a particular gift when the survey is made; *and when this doctrine has been asserted in this court upon the general principles which courts of justice apply to such grants from the public to an individual, good faith requires that the same doctrine should be applied to grants made by the Mexican Government where a controversy arises between the United States and*

the Mexican grantee." *id.*

See also *Hornsby* vs. *United States*, 77 U. S. 232, Opinion by Justice Field.

In the case at bar, *the grantee paid a money consideration to the Mexican Government for his grant*, and it would seem that *in such a case there can be no possible doubt, but that a court of equity will treat the grant as firm and valid.*

The honor of the United States Government is at stake, and this Court has frequently declared that it was not the intention of Congress to forfeit grants, or to confiscate private property or to determine the rights of private parties under the treaty in a narrow and illiberal manner, but that it is the intention of this Government and of Congress to afford protection and security to all just rights which the petitioner could have claimed at the date of the treaty from the Mexican Government.

U. S. vs. *Agricola*, 1 Wall. 358.

Under the law of Sonora of May 14th, 1852, the claimant had a clear and undisputed legal right to select his "cabida legal" at any place he chose within the boundaries described in his title papers. *This, then, was a vested right of property in the grantee at the date of the Gadsen Treaty. To deprive him of this property right is to confiscate his property without due process of law. It is to declare a forfeiture by a narrow and illiberal construction of the treaty, which was executed in duplicate, and under the Spanish version of which this govern-*

ment is in honor bound to respect and recognize this grant.

Under Mexican laws the right of the grantee was not vested in any particular two (or four) sitios of land within the boundaries described in his title papers. Demasias are defined by Art. III, Chapter I of the Mexican law of 1894:

> "To be thus held by private persons on *primordial* title and to a greater extent than specified, such surplus however being within the boundaries mentioned in the title, and, consequently, mixed up in its entirety with the area for which a title is held."

In this character of grant the Demasias were always treated as being "mixed up in its entirety with the area "for which a title was held". Of course that is only another way of stating that *the "cabida legal" is mixed up in its entirety with the surplus lands* embraced within the boundaries described in the title papers. Hence the grantee never had an indefeasible title to any particular two (or four) sitios of land within the boundaries described in his title papers, *but he had a vested right to select that quantity where he chose within those limits.*

This Court necessarily erred therefore in holding that the grant is void unless the "cabida legal" was originally nailed to the ground at some particular point within the boundaries described in the title papers.

Art. IV of law No. 197 of the State of Sonora, enacted May 14th, 1852, is as follows:

> "The holders shall have the power to select, within the boundaries stated in the grant, the principal, or main, area, which may be more suitable to them, provided that the demasias are arranged in such a way as to make them adjoin each other and form a body, thus allowing them to be sold to advantage." See translation by Dr. J. I. Rodrigues, chief translator for the Bureau of American Republics, as same appears in "ADDITIONAL BRIEF FOR CLAIMANTS" in cases Nos. 109 and 129 (consolidated), October term, 1901.

Until judicial action was taken in Mexico to compel the grantee to select his "cabida legal", or principal area, under said law of Sonora, it must be apparent that "to every and to each part of the land surveyed its "owner had an equal right", as was said by Chief Justice Marshall in the case of *Taylor* vs. *Brown*, 5 Cranch. 234, in construing a grant in Virginia, under its ancient laws which likewise provided that the grantee or patentee could "allot the surplus" in any part of the grant which he chose. The right to "allot the surplus" is the exact equivalent of the right to select the "cabida legal" or principal area. And this right was fully recognized by the law of the State of Sonora, No. 51 of May 12th, 1835, which reads in part as follows:

> "ARTICLE 2. Those are likewise *bona fide* owners who, under the description given in their records of survey, occupy some excess of land; and they are entitled to such excess, even after such excess is shown, without any other requirement

than that of paying for the excess in accordance with the quality of the land at the price which prevailed when the land was measured and appraised, and only in case the owner does not want the excess, or when such excess is very great in the opinion of the government, upon the report of the treasurer, shall such excess be awarded to any one denouncing or soliciting it; and such person shall bear the expense of the resurvey if excess has not been ascertained. In lands measured by calculation none shall be regarded as excess that does not exceed half a sitio."

NOTE.—The foregoing is the official translation, made expressly for this Court and adopted by it in the case of *Ainsa* vs. *U. S.*, 161 U. S. 225.

And this law was not repealed by said law No. 197 of May 14th, 1852, as in Mexico laws are not repealed by implication except in so far as they are repugnant to the later laws.

Compiled laws of Mexico Vol. 3, Page 557.

In the case of *United States* vs. *Moreno*, 1 Wall. 400, this Court said:

"A right of any validity before the treaty was equally valid afterwards. The act recognizes alike legal and equitable rights, and should be administered in a large and liberal spirit."

And in the case of *Hornsby* vs. *United States*, 10 Wall. 224, this Court said:

"The word property includes every species of title inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are exceuted. In this respect the relation of the inhabitants to their government was not changed. The government takes the place of that which has passed away."

Surely it has never been contended, and it cannot be successfully contended, that this grantee did not have a vested right of property at the date of the Gadsden Treaty.

It can make no difference that the out-boundaries of the grant are not fixed with absolute nicety and certainty. Nearly all of the floating grants in California had very loosely defined out-boundaries. The grantee who has paid a money consideration ought not to suffer by reason of the fact that the officers of the Government failed to describe the out-boundaries so that they can be identified with absolute certainty after this great lapse of time. If two sides of the grant can still be located with reasonable certainty, and those two sides meet at an angle the grantee ought to be permitted to select his "cabida legal" at any place within the angle so made by those two sides, and if three sides of the grant can still be located with reasonable certainty there would seem to be no difficulty whatever about giving to the grantee his "cabida legal" in such a way as to assure its being located within the original boundaries described in the title papers.

> "It is not necessary that the grant itself should contain such a description, as without the aid of extrinsic testimony, to ascertain precisely what is conveyed."
>
> *Blake* vs. *Doherty*, 5 Wheat. 359.

It may be suggested, however, that it has not been shown that we complied with Art. II of said law of 1852, and that therefore we have lost our right to *select*

our principal or main area under Section IV of said law. It will be noticed that the "original records of the survey" are to be forwarded to the Treasury. In this grant those "original records" were never in the possession of the grantees or their successors in interest, but were deposited in the Treasury in the first instance, and have remained there ever since. A *copy* thereof *only* was delivered to the grantees (Record, pp. 531 and 234).

This law was not intended to apply to those cases where the *original expediente* remained in the archives, but to those in which said "original records" were lost from the archives, or by some means got into the hands of the owner of the land, as was not infrequently the case.

Fourth.

THE FACT THAT MEXICO LONG SUBSEQUENT TO THE DATE OF THE TREATY WITHDREW FROM THE GRANTEE THE RIGHT TO SELECT HIS "CABIDA LEGAL" IN ANY PART OF THE GRANT HE CHOSE, AND THAT IT ASSUMED THE RIGHT TO SELECT SUCH "CABIDA LEGAL" FOR HIM, CAN IN NO WAY AFFECT THE RIGHTS OF THIS GRANTEE. THE ACTION OF MEXICO IN THIS RESPECT OUGHT NOT TO BE EVEN OF ANY PERSUASIVE EFFECT UPON THIS COURT IN DETERMINING THE RIGHTS OF THIS GRANTEE.

Mexico has not always acted according to the most enlightened views of morality or equity in its dealings with its citizens with respect to their property rights. The congress of Mexico can overturn vested rights of property and can impair the obligation of contracts with impunity. That body is the judge of the constitutionality of its own laws. But because Mexico has so done, it does not follow that it would be in accordance with equity or good morals for this Government to follow suit.

The moment this land became a part of the United States the rights of the grantee, as they existed at the date of the treaty, passed under the protection of the Constitution of the United States.

As was said by this Court in the case of *Pollard's Lessee* vs. *Hogan*, 3 How. 219:

> "*Every nation acquiring property by treaty, or otherwise, must hold it subject to the Constitution and laws of its own government, and not according to those of the government ceding it.*"

The right of the grantee to select his "cabida legal" in any part of the grant he chose, is a vested right of property which under the sturdy principles of Magna Charter and under the Constitution of the United States, and under the principles of natural justice, cannot be taken away from him without adequate compensation. This Court has held that in the absence of any constitutional provision against the impairment of contractual obligations a law which

vests a property right cannot be repealed so as to affect vested rights, and these decisions are based expressly upon principles of natural justice.

Terrett et al. vs. *Taylor*, 9 Cranch. 44;
Fletcher vs. *Peck*, 6 Cranch. 177.

For the foregoing reasons we urge this Honorable Court to recall the remittitur which it has caused to be issued in this case, and to review its decision in the foregoing matter.

Respectfully submitted,

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Attorneys for Appellant.

We hereby certify that in our opinion the foregoing petition for a re-hearing is well founded in law.

JOHN W. GRIGGS,
FRANCIS J. HENEY,
ROCHESTER FORD,

Supreme Court of the United States.

Nos. 109 and 129.—October Term, 1901.

109	The United States, Appellant, *vs.* A. A. Green et al.	Appeals from the Court of Private Land Claims.
129	Harvey L. Christie and Colin Cameron, Appellants, *vs.* The United States.	

[April 28, 1902.]

These appeals concern the title to a tract of land situated in the county of Pima, Territory of Arizona. The litigation was begun by the filing in the Court of Private Land Claims, on February 27, 1893, on behalf of Alfred A. Green, of a petition by which the court was asked to declare the validity of the title of Green to the tract. It was alleged that Green had become invested with the title by mesne conveyances from one Ramon Romero and others, to whom the land had been granted on May 15, 1825, by the State of the West in the Republic of Mexico.

While the original documents constituting the grant were averred to be in the official custody of the surveyor general of the United States for the Territory of Arizona, it was alleged that the claim had not theretofore been considered or acted upon by Congress, or any other authority of the United States. A map was annexed to the petition, which it was asserted showed the boundaries of the land, and established that the quantity thereof was sixteen square leagues. Not only the United States, but also Colin Cameron, and others whom it was averred claimed some interest in the land, were made parties defendant to the cause.

The United States filed a general denial. Thereafter, on March 20, 1895, upon the application of the United States, Harvey L. Christie was made a party defendant, on the ground that he asserted title to the land under the grant to Romero.

On March 25, 1895, Colin Cameron filed an answer, in which he denied that petitioner had any interest in whole or in part in the land, and it was also averred that he (Cameron) was the owner in fee simple, and that he was in possession of the tract, under the grant of May 15, 1825, referred to in the petition. The land claimed by Cameron was delineated on a map annexed to the answer, and the land was averred to be embraced within the original survey of the grant. The proceedings which it was

claimed culminated in the grant were detailed at length. It was also alleged that as the result of proceedings instituted on February 28, 1880, by the successors in interest to the original grantees the surveyor general of the United States for the territory of Arizona, on April 28, 1880, recommended the confirmation by Congress of said grant to the legal representatives of the original grantees to the extent of four square leagues, but that no action had been taken thereon by Congress.

Defendant also pleaded that on September 6, 1886, the United States, under the act of Congress approved February 25, 1885, entitled "An act to prevent unlawful occupancy of the public lands," brought suit against him for an alleged unlawful enclosure of public lands, a part of the tract in question, and that the trial court had adjudicated that the map attached to Cameron's answer in this case correctly represented the land included within the boundaries described in the original title papers of said grant, and that such map correctly represented the location of each monument called for and described in said title papers, Such findings of fact as to the monuments and location of the said grant were thereupon averred to be *res adjudicata* herein. The answer concluded as follows:

"Defendant further avers, in order to save every right belonging to him, that he in nowise invokes the jurisdiction of this court or submits himself to it voluntarily, and that he answers herein only because he has been made a party defendant. Defendant avers that he claims the lands of the said San Rafael de la Zanja grant under a title derived from the Mexican government that was complete and perfect when the United States acquired sovereignty over such lands; that all the steps and proceedings in the matter of the petition, survey, appraisement offers, auctions and sale of said grant and payment therefor were regular, complete and lawful, and vested a perfect and valid title in fee thereto in the said grantees of said grant, and that said grantees at the time went into the actual possession, use and occupation of said grant and erected the proper monuments, and that said grantees and their descendants and legal representatives have continued ever since and until the present time in the actual possession, use and occupation of the same, and are now seized and possessed in fee thereof; that said grant document is a complete, definite grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years, without good reason, which abandonment would subject the tract to adjudication to third parties who might apply for or denounce the same; but that no forfeiture of said grant was ever claimed.

"Defendant avers that by reason of the premises he is in nowise bound by the act of Congress, establishing this court to apply to this court for a confirmation of said title, and that he is unwilling to submit himself to the conditions, or any of them, imposed by the act establishing this court, upon petitioners applying to said court for confirmation of their title, and that he does not by this answer, or in any other way, so apply."

On February 4, 1899, Cameron filed what was termed a "separate answer," in which were repeated the averments in the prior answer as to the petitioner not possessing any interest in the tract, the ownership thereof

in the defendant, the proceedings which culminated in the grant to Romero, and the proceedings had before the surveyor general of Arizona. An averment was made that the map filed with the answer, as a part thereof, was a correct map of the grant in question, and showed the area of the grant to be 152,889.62 acres. It was next alleged that the grant to Romero was not a grant by quantity, but was a sale by metes and bounds and natural landmarks established by the Spanish survey, and that the grant vested in the grantees a true and valid title in fee to the whole of the surveyed land; and it was further alleged that each and every person in the occupancy of any portion of the tract were unlawfully occupying and that any patents issued by the United States for land within the grant were null and void. The answer next contained the following averments:

"Defendant further avers that prior to said treaty, known as the Gadsden treaty, no resurvey of said grant had ever been applied for or ordered by any one, and that none of the grantees or their successors in interest had prior to said treaty any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and defendant avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners even after such overplus is shown, without other obligations than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and defendant further avers that if this honorable court should decide that said sale as recited in said title papers did not, as defendant avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained."

The answer concluded with a tender of $1,359 as payment for any overplus, and the further sum of $200 for the costs of ascertaining and determining the existence or non-existence of such overplus, and concluded with the prayer "that upon said payment this honorable court decree that defendant is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the ownership and possession of the whole of said tract, and defendant, answering herein by reason of the fact that he has been made a party defendant, prays that the validity of his said title may may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and the defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises."

On February 4, 1899, an answer of defendant Christie was filed, in which it was averred that Christie was the owner of the land granted to Romero. In other respects the answer reiterated the allegations contained in the separate answer of Cameron just stated.

In a supplemental answer filed by leave on May 19, 1899, Cameron reiterated the plea of *res adjudicata* contained in his original answer.

From time to time various other defendants filed answers, setting up title by adverse possession, and otherwise to sundry portions of the land in controversy. The cause was heard on the theory that the pleadings of Cameron and Christie just referred to were cross complaints, demanding affirmative relief against the United States. On behalf of the two defendants named, there was introduced in evidence a certified copy of the expediente of the grant, as also the original titulo. This titulo shows the following as the original proceedings upon which the title was based:

On July 19, 1821, Don Manuel Bustillo, a resident of the presidio of Santa Cruz, applied to the intendant of the province of Sonora and Sinaloa, Antonio Codero, at Arispe, for four sitios of land at a place to which was afterwards given the name of San Rafael de la Zanja. Three of these sitios were to be north of and adjoining the lands of said presidio, and the other at the place called Cajoncito to the east. The application was granted on the same day without prejudice to third parties, and the commandant of Santa Cruz was ordered to make the survey, appraisement and publication of the land for thirty consecutive days in solicitation of bidders. Gonzales, the commandant of Santa Cruz, accepted the commission October 4, 1821, and ordered the survey to be commenced on the next day, after summoning the party in interest and the owners of coterminous lands. An assistant was appointed, and the survey made on October 5 and 6, 1821. After a waxed and twisted hempen cord of fifty varas had been measured, the applicant (Bustillo) requested that, inasmuch as the place called Cajoncito was inside of the presidio lands, the one sitio he had asked for there be given to him in one tract with the other three, which request was granted. In substance it appeared that the survey was made by running or estimating the lines from the central point two hundred cords east, west, north and south, the ends of the lines being extended to form a square The recitals of the survey concluded as follows:

"with which measurements was formed the square of the four sitios registered by Don Manuel Bustillo for raising cattle, and as such he accepted them; being informed that in due time he was to establish his boundaries with monuments of lime and rough stone as required by law."

Appraisers were appointed, and four sitios were appraised as follows: Three sitios at $60 each, because they had permanent water, and one sitio at $30, because it was dry. Publication was then made for thirty consecutive days, soliciting bidders. None appeared. Affidavits were taken to

show that Bustillo was able to stock four sitios. The expediente was then forwarded to the intendant, who, in December, 1821, referred it to the attorney general for his opinion. The latter official submitted a written opinion December 20, 1821, approving the proceedings, and recommending that the three usual public offers be made and the land sold to the highest bidder upon payment of the price and the usual fees. The intendant approved the recommendation, and ordered the three public offers made. The first offer was made January, 1822. The proclamation made by the crier, as recited in the account of the proceedings of the first auction, was as follows:

"There are going to be sold for this commission of auctions four sitios of public lands for cattle raising, comprised in the place named San Rafael de la Zanja, situated within the jurisdiction of the presidio of San Cruz, surveyed in favor of the one who denounced them, Don Manuel Bustillo, and appraised in the sum of two hundred and ten dollars, being at the rate of sixty dollars each for three of said sitios, and the remaining one at thirty dollars."

The bidders at the sale were Bustillo and one Romero. The latter, on behalf of himself and the residents of the presidio of Santa Cruz, became the purchasers for the sum of $1,200. Romero was notified of the result, with which he expressed satisfaction, and asked the grant to be made. On January 11, 1822, the intendant *ad interim*, Ignacio de Bustamante, approved all the proceedings, and ordered Romero to be notified and to pay into the treasury the price of the land and the usual fees, and, as soon as that was done and a voucher for the payment was attached to the expediente, it be sent to the superior board of the treasury in Mexico for such action as it might see fit to take. Romero made the payment, and a certificate was given him for the amount thereof. At this point the proceedings were suspended, and so remained until May 15, 1825, when the recently created commissary general of the State of Sonora, Juan Miguel Riesgo, issued a title to "Don Ramon Romero and the other residents in interest," for "the four sitios of land for breeding cattle, comprising the place called San Rafael de la Zanja," under article 81, ordinance of intendants, and the royal instructions of October 15, 1754, at Fuerte, the then capital of the United States of Sonora and Sinaloa.

The following appears at the end of the titulo, viz: "Entry of this title is made at folio 3 of book No. 2 that exists in this commissariat general."

The expediente, which was on file in the archives of the State of Sonora, Mexico, at the city of Hermosillo, the capital, contained, following the certificate of the payments made by Romero, the following recital:

"The title on this expediente was issued on May 15, 1825, in favor of the interested parties, Don Ramon Romero and other residents of Santa Cruz. (Rubricas E. R. Pa. 7 a. Notification. Vale.)"

The court found (two members dissenting) that a valid grant had been made, that the evidence established the central point of the original survey, and confirmation was made and decreed "of the said title of the said Ramon Romero, and of his co-owners and of their heirs, successors in interest, and assigns" to four sitios of the tract, measured in a square from the center established by the Mexican surveyor, as shown on the map of a certain survey made in 1895, and in evidence in the cause. The claim of plaintiff and of defendants Cameron and Christie to all other land not so confirmed was rejected.

Appeals were prosecuted by the United States and by Cameron and Christie.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court

We will first dispose of the questions presented by the appeal of the United States. In substance, it is asserted that the grant should have been rejected *in toto*, instead of being confirmed to the extent of four sitios, upon the following grounds: 1. That the claim was barred by section 12 of the act establishing the Court of Private Land Claims, because not asserted until after the expiration of two years from the passage of the act. True, it is said, the claim of Green was presented in time, but as he was not represented at the trial and Cameron and Christie were treated as the sole claimants and they had not by their cross complaints asked for affirmative relief within the statutory limitation, the bar of the statute was operative as to them. 2. The intendant *ad interim* Bustamente, through whom the sale to Romero and others purported to have been effected, and the commissary general of Sonora who ultimately extended the title, did not possess the power in the premises which they assumed to exercise; 3. The grant in question was not duly located prior to September 25, 1853, as required by article VI of the Gadsden treaty; 4. The grant was not duly recorded in the archives of Mexico prior to September 25, 1853, which was made a condition precedent to the recognition of an alleged grant, by the article of the treaty just referred to.

As respects the bar of the statute, we think the contention is clearly without merit, even upon the hypothesis that the grant to Romero constituted, at the date of the treaty, but an imperfect title to the extent to which the court below confirmed the same. The provision of the act establishing the Court of Private Land Claims, relied upon, is as follows:

"SEC. 12. That all claims mentioned in section six of this act which are by the provisions of this act authorized to be prosecuted shall, at the end of two years from the taking effect of this act, if no petition in respect to to the same shall have then been filed as hereinbefore provided, be deemed and taken, in all courts and elsewhere, to be abandoned, and shall be forever barred."

By the filing of the petition on behalf of Green the court below was vested with jurisdiction to determine the validity of the grant upon which the proceeding was based and to pass upon the question as to whether or not the lands embraced therein were at the date of the treaty public land of the United States. The terms of the act establishing the Court of the Private Land Claims, with reference to a proceeding thus instituted, in our opinion leaves no room for doubt that it was the intention of Congress to require that before a decision by the court in the premises, all those asserting claims in the land adverse to the United States, under the grant relied upon, should be made parties and be heard in support of its validity. The provisions of section six of the act, which relate to claims for confirmation of imperfect and incomplete titles, manifestly import that every adverse possessor or claimant should be made a party defendant, and the section prohibits the entry of a decree "otherwise than upon full legal proof and hearing." By section seven, "all proceedings subsequent to the filing of the petition" are required to "be conducted as near as may be according to the practice of the courts of equity of the United States;" and, in addition, it is provided as follows:

"The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title, and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, or the treaty concluded between the same powers at the city of Mexico on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law or ordinance under which such claim is confirmed or rejected."

The fact also that, by section 8, the United States may, without limitation as to time, voluntarily institute a proceeding for the determination of the validity or invalidity of any claim or title deemed by it "open to question," affords further support for the construction that Congress intended that in a proceeding brought in due time to settle the validity of an alleged Spanish or Mexican grant, the United States might, at any stage of such pending litigation, apply to the Court of Private Land Claims—as was done by the United States with respect to the defendant Christie—to have brought into the case adverse claimants who had not been made parties defendant by the petitioner, in order that such parties might be afforded

an opportunity to be heard, and the Court of Private Land Claims be aided in reaching a just decision. As further establishing the fact that it was not the purpose of Congress to deprive the Court of Private Land Claims of power to adjudicate upon claims asserted by defendants during the pendency of a lawful proceeding to obtain an adjudication respecting the validity of an alleged Mexican grant, even though such defendants were made parties or filed claims for affirmative relief after the period limited for the institution of an original proceeding to obtain confirmation of a claim of title, we excerpt the following proviso to the portion of section 12 heretofore quoted:

"*Provided*, That in any case where it shall come to the knowledge of the court that minors, married women or persons *non compos mentis* are interested in any land claim or matter brought before the court, it shall be its duty to appoint a guardian *ad litem* for such persons under disability, and require a petition to be filed in their behalf, as in other cases, and if necessary to appoint counsel for the protection of their rights."

The second and third grounds relied upon by the government, as above stated, to defeat the claim in its entirety do not require extended consideration, as they are foreclosed by recent decisions of this court. By the law in force at the time of the sale under consideration a grant initiated in the manner in which the one in question is claimed to have been, could not exceed, in the aggregate, four sitios. The evidence clearly showed that the quantity of land denounced, appraised, paid for and purported to have been granted was only four sitios. Under these circumstances, the court below properly sustained the grant to the extent of four sitios only. As said by the Court of Private Land Claims: "The cause is founded on a proceeding initiated in 1821 and concluded in 1825. In its essential features it is like *Ely's Administrator* v. *United States*, (171 U. S. 220.) The proceedings under which the grant was made are precisely like those upon which the grant in that case was made, and were had under the same laws, and the two grants were made by the same officer." The case in the particular stated is, therefore, ruled by *Ely* v. *United States, supra; United States* v. *Maish*, (171 U. S. 277;) *Perrin* v. *United States*, (Id. 292;) and *United States* v. *Camou*, and *Reloj Cattle Company* v. *United States*, decided at this term.

As from the evidence the Court of Private Land Claims was able to determine the true boundaries of the tract as limited, the cases just cited are also authority for deciding that the grant was duly located to that extent, and hence that the court rightfully confirmed the grant for the lawful extent thereof.

The remaining ground upon which the United States contends that the claim should have been rejected, is that it was not established that a record of the grant was made. As respects the evidence of a due recording of

the grant, the case at bar is similar to the Ely case, *supra*, where, however, no question was raised by the government as to the want of a proper record. In the Sonoita grant, passed on in the Ely case, the final title was issued on the same day on which the final title in the case at bar purports to have been issued, and contained a like notation that "note of this title is taken on page 3 of book No. 2 in this general commissariat." A memorandum of this character appears to have been customarily endorsed on the titulo.

The evidence in the case at bar showed that there are only two books of Toma de Razon in the records at the capital of the State of Sonora, Mexico. One book has the figure 1 written on the first page of the first leaf, and contains entries of grants up to and including May 13, 1825. The first entry on the other book bears date of 1831. In the case at bar the final title or titulo, of date prior to the regulations of 1828, was admitted in evidence without objection or question as to its genuineness, nor was any objection interposed by the government to the introduction in evidence of a letter, dated some time in 1831, written by the provincial secretary of Sonora, on behalf of the commissariat general of that State, alluding to the existence of the title to this San Rafael grant. The expediente is also on file in the Mexican archives, and contains thereon a memorandum of the issue of a grant. In view of all these circumstances it may properly be presumed that the ministerial duty which it is claimed was imposed on the Mexican officials of registering the fact of the making of a grant of public lands was duly performed, and that such record was in fact made. Whether, as held by the court below, the mere retention in the Mexican archives of the expediente constituted the record of the grant, within the meaning of the treaty of 1853, need not be determined.

We come then to consider the contentions relied upon by the claimants to sustain their appeals. Those contentions are in substance that the grant to Romero and his associates constituted a complete and perfect title to the full quantity of land embraced within the original survey, which it was asserted by witnesses for the claimants aggregated not merely four sitios, but nearly one hundred and sixty thousand acres of land. It is manifest, however, from the authorities which we have previously cited, that as the grant was lawful to the extent of only four sitios, the claimants cannot be heard successfully to assert that it embraced and could be confirmed for the larger quantity.

The previous decisions of this court also preclude the claim for a confirmation of the grant as to the overplus upon payment of the asserted value of such excess. In *Ainsa* v. *United States*, decided at this term, discussing the contention of the claimant that he was entitled to an award of the demaisas or overplus beyond the cabida legal or real quantity granted,

upon payment of such amount as might be found due, the court concluded as follows:

"It is obvious that this contention cannot be sustained for the reasons indicated, and we repeat what we said in *Ely's case*, (171 U. S. 239:) 'This government promised to inviolably respect the property of Mexicans That means the property as it then was, and does not imply any addition to it. The cession did not increase rights. That which was beyond challenge before remained so after. That which was subject to challenge before did not become a vested right after. No duty rests on this government to recognize the validity of a grant to any area of greater extent than was recognized by the government of Mexico. If that government had a right, as we have seen in *Ainsa* v. *United States* it had, to compel payment for an overplus or resell such overplus to a third party, then this government is under no moral or legal obligations to consider such overplus as granted, but may justly and equitably treat the grant as limited to the area purchased and paid for.'"

Counsel for claimants in their brief call attention to the plea of *res adjudicata* interposed by the claimant Cameron, though they do not discuss the same. The action in which the judgment thus pleaded was rendered related to land within the asserted exterior bounds of the grant, near the alleged north and northeast monuments, as said boundaries were recited and measured in the expediente. The courts of the territory had held that the lands enclosed were public lands of the United States, that Cameron had unlawfully enclosed the same, and the removal of the fence enclosing the land was ordered. On appeal, however, this court, while expressly disclaiming any intention to pass upon the validity of the asserted title of Cameron, held that there was color of title sufficient to take the case outside of the operation of the statute, reversed the judgment against Cameron, and remanded the case with directions to dismiss the petition. (148 U. S. 301.) It is clear that, irrespective of the question of parties, the matter passed upon in the fence case was not the same as that which is present in the case at bar. The fence case did not involve, as does the case at bar, the question whether or not the claimant had a valid title to land within the boundaries of the alleged grant, and hence nothing decided in that case was conclusive in this.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.